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a comparative analysis of juvenile codes

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a comparative analysis of juvenile codes

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PREPARED FOR
United Stated Department of Justice
Law Enforcement Assistance Administration
Office of Juvenile Justice and Delinquency Prevention

Jane L. King

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Foreword

A pervasive mandate of the 1974 Juvenile Justice and Delinquency Prevention Act is the meaningful involvement of young people in the effort to deinstitutionalize youthful offenders and to bring about improvements in the juvenile justice system. To this end Congress requires that all federal and state advisory groups established pursuant to the Act consist of at least one-third youth members to assure consideration of their unique perspectives in all aspects of juvenile justice. In this spirit we have sought to encourage student-based research with respect to children in adult jails and lockups.

A Comparative Analysis of Juvenile Codes is such an effort, having added significantly to the juvenile justice literature while fulfilling the academic requirements of graduate work. The findings of this research provide an update to the 1974 work of Levin and Saari at the National Assessment of Juvenile Corrections. The effort was necessitated by the almost universal reconsideration of state juvenile legislation since the enactment of the JJDP Act in 1974. While our research has endeavored to update the original format and thereby provide continuity for legal scholars and practitioners alike, we have added a new section which details the changes which have been made with respect to the deinstitutionalization requirements of Section 223(a)(12)(13) of the Act.

A word of caution to the reader involves the limitation of this analysis to the statutory language of each juvenile code. The study does not include the myriad of court rules, attorney general opinions, and executive orders which have significant bearing on the application of legislative language. For this reason, as well as the day-to-day volatility of legislative change in this area, the reader is advised to supplement this information with an annotated examination of actual practice in any given state or territory.

James W. Brown
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Acknowledgements

A Comparative Analysis of Juvenile Codes is the result of a study designed to present the juvenile law of all the states and territories in a format understandable and of use to all those who might need such a reference tool. A concern with the incarceration of children provided the stimulus for the report which was sponsored by the Office of Juvenile Justice and Delinquency Prevention pursuant to the federal Juvenile Justice and Delinquency Prevention Act.

Appreciation is extended to all of those who contributed to clarity of format and subject matter presentation, and most importantly, accuracy of data. Among those are Jim Brown, Bob Kihm, Jonas Mata, Rob Knourek, Barbara Sewell, Sara Booker, and Elizabeth Daum of the Community Research Forum.

Special appreciation is extended to all of those juvenile justice specialists in the states and territories who initially provided helpful information on the juvenile law in their geographical areas and those who shortly before final publication reviewed the preliminary draft as to the clarity and accuracy of the information presented.

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Introduction

In 1855 the Chicago Reform School was established to serve not punish children who were crime-prone. The school was viewed as an alternative to placing children in adult institutions. Likewise, the establishment of the first juvenile court in 1899 in Illinois was the result of a movement to provide an alternative to the adult system: to stop the incarceration of children in adult prisons.[1]

As the end of the 20th century approaches, a similar movement is in progress to improve the juvenile justice system--to at the very least remove young people from adult confinement facilities. This concern with the incarceration of children provided the stimulus for this report, sponsored by the Office of Juvenile Justice and Delinquency Prevention pursuant to the federal Juvenile Justice and Delinquency Prevention Act (hereinafter, JJDP Act). A comparative analysis of juvenile court legislation is essential to an understanding of how the juvenile justice system works throughout the country and a knowledge of the system is essential in striving for appropriate changes. For the "...legislature is the primary designer of the JJS (juvenile justice system) in that it establishes the acts of delinquency, defines the jurisdiction of the juvenile courts, determines when juveniles may be apprehended and detained, and establishes basic guidelines for juvenile institutions."[2]

Using a comparative analysis of juvenile court legislation as a guide, it should be possible with an understanding of the overall system to identify legislative problem areas in a given state. The more progressive legislation of another state can then be used as a model for change.

During the past decade, juvenile court legislation has been in a state of flux and it continues to change each year, largely in response to the JJDP Act, with its focus on the deinstitutionalization of status offenders and nonoffenders and the separation of juveniles from adults if they are held in adult confinement facilities. Within the past two years, significant changes have been made in the juvenile codes of at least 33 states; many states have repealed the old juvenile laws and enacted totally new juvenile codes, for example, New Hampshire, Iowa, Mississippi, North Carolina, and Washington.

Although a comparative analysis of the state juvenile codes is a volatile area and obviously critical given the great interest on the local, state, and federal level in improving the juvenile justice system, not since 1974 in Juvenile

Delinquency: A Comparative Analysis of Legal Codes in the United States, by Levin and Sarri of the National Assessment of Juvenile Corrections, has a comprehensive analysis of juvenile codes been conducted. This document seeks to update the significant changes which have developed at both the state and federal level since the enactment of the 1974 Juvenile Justice and Delinquency Prevention Act.

Because this research project was funded by the Office of Juvenile Justice and Delinquency Prevention pursuant to the Act, a major objective was to review the juvenile codes of the 56 states and territories to provide a legal update in the areas of specific concern to the Juvenile Justice and Delinquency Prevention Act. These areas as mentioned above are the deinstitutionalization of status offenders and nonoffenders, and the separation of juveniles from adults in adult facilities (See Part 9). However, the difference in the Act's definitions as interpreted by its administering agency, the Office of Juvenile Justice and Delinquency Prevention, of juveniles within the juvenile justice system and the definitions contained in state juvenile codes required separate treatment of on the one hand, presenting an accurate view of state law and on the other, assessing whether state law adheres to the requirements of the Act. Thus, the larger part of this publication reflects state law and uses the less preferable state law terms: delinquent (which usually includes some status offenses because a delinquent act is defined as a violation of law and thus can include truancy and curfew violations which are actually status offenses), children in need of supervision, and dependent, abused, or neglected juveniles. These terms should be compared with the more preferable terms of the Act: criminal-type offender (the act committed is a crime if committed by an adult), status offender (the act committed is not a crime if committed by an adult), and non-offender (typically the same as the state terms).

A separate discussion on the Act was necessary for in measuring whether a state's legislation adheres to the requirements of the Act's deinstitutionalization provisions, the inconsistency between a state's definitions and the Act's may result in a slightly inaccurate view. This means that although a state may require the deinstitutionalization of its children in need of supervision, this may not include all status offenders as required by the act if curfew and truancy violations are included within the state's delinquent category.

An analysis of the above areas of the Act required placing them in the context of the overall system. Thus what results is a fairly complete overview of the juvenile justice system in each state and territory. Areas covered are: (1) juvenile court structure; (2) waiver to the adult criminal court; (3) maximum age of juvenile court jurisdiction; (4) types of juveniles within the court's jurisdiction; (5) the custody process; (6) place of detention; (7) time and petition requirements; (8) disposition; (9) statutory references to the Interstate Compact on Juveniles; and (10) information on inspection provisions for juvenile facilities (also a concern of the JJDP Act).

The approach of the study was to review the laws pertaining to juveniles in the 56 states and territories analyzing them through the method of a questionnaire taken from the earlier Levin and Sarri study with extensive modifications.

The present study is not as broad as the earlier study although it does include dependent, abused, or neglected juveniles where the earlier study did not. This study focuses more on the deinstitutionalization and separation provisions of the JJDP Act and as noted above seeks to place those provisions in context in each state's juvenile court provisions.

Several weeks before final publication, a preliminary draft of this study was sent out to juvenile justice specialists in each state and territory for their review. This final publication reflects suggested changes from reviewers of a majority of the states.

Due to time restrictions, only juvenile codes were consulted for this study. A thorough research of all the laws pertaining to juveniles within the juvenile justice system was not conducted. Rules of court were not consulted.

However, with regard to rules of court, one could argue that important issues such as waiver and the jailing of children should not be relegated to possible inclusion in the rules of court, but should be provided by the elected legislative body through the enactment of statutes which have all the force of authority second only to state constitutions.

As a final note, this report reflects the law as of mid-1979. An up-date of the report will be conducted annually hereafter, the first scheduled for completion in Fall of 1980.

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1 Juvenile Court Structure

Initial considerations in viewing the juvenile court systems throughout the United States include: (1) Which court handles juvenile matters? (2) Is there a juvenile court in each county of the state? (3) Where may charges be brought against a juvenile or where may a petition be filed?

The latter two inquiries are central to the concept of community-based treatment for a juvenile as expressed in the purpose sections of many state juvenile codes. For example, in the recently enacted New Hampshire juvenile code, one of its stated purposes is to provide treatment for a delinquent child "whenever possible, by keeping a minor in contact with his home community and in a family environment by preserving the unity of the family and separating the minor from his parents only when it is clearly necessary for his welfare or the interests of public safety and when it can be clearly shown that a change in custody and control will plainly better the minor...."[3] It would seem to be contrary to such an express statutory purpose if for example, a juvenile could be held miles from his or her community in detention because also pursuant to statute, the action can be brought where the alleged act occurred.

A. The Juvenile Court

In almost half of the states and territories the district court* or the superior or circuit court** or a division thereof serves as the juvenile court. Other systems are indicated in Table One.

*Idaho, Iowa, Kansas, Kentucky, Maine, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Vermont.

**Alaska, Arizona, California, Connecticut, District of Columbia, Florida, Guam, Illinois, Indiana, Maryland, Missouri, Oregon, Puerto Rico, South Dakota, Washington.

B. Requirement of a Juvenile Court in Each County

A juvenile court within the juvenile's county of residence is not always required. Many states are divided into judicial districts or circuits with a juvenile court established in each area. The districts may or may not correspond to the counties within a state, although at least 26 states clearly require a juvenile court in each county.*

*Alabama, Arizona, Arkansas, California, Delaware, Georgia, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, West Virginia, Wyoming.

C. Filing the Petition

Generally, a petition can be filed in the county of a juvenile's residence or where the alleged offense occurred. Given this fact, an important consideration for achieving the goal of community-based treatment, is whether or not there is a provision for intra-state transfer to the court serving the county of a juvenile's residence. In most states, intra-state transfer is at the juvenile court judge's discretion.* (Note that there may be requirements in the statute. For example, in Colorado, for certain groups of children, the out-of-county court where the petition is filed, prior to a finding that the allegations of the petition are true, must notify the court in the county of the juvenile's residence of the filing of the petition. The court in the juvenile's county of residence then has 10 days within which to request a change of venue.) In the juvenile codes of many other states, although there may be a venue provision and a change of venue provision, there is no specific provision for the transfer of a juvenile to his or her county of residence.** Note that the reason for this may be that there is only one venue available as on the island of Guam.

*Alabama, Alaska, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnestoa, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Wisconsin, Wyoming.

**American Samoa, Arizona, Arkansas, Delaware, District of Columbia, Guam, Idaho, Maine, Massachusetts, Nevada, New Hersey, Puerto Rico, Rhode Island, South Carolina, Trust Territories, Virgin Islands, West Virginia.

Oregon and Washington require with some exceptions intra-state transfer to the county of residence while Montana has a county of residency provision with a discretionary transfer. In Texas, intra-state transfer is allowed with consent of the juvenile and an appropriate adult. In Georgia, intrastate transfer is required after adjudication as "unruly" child or "delinquent." Of those states with separate laws for dependent, abused, or neglected juveniles, in California, Iowa, New Hampshire, and Virginia, transfer is at the discretion of the judge; in Idaho, Maine, Montana, and New York, the petition must be filed in the county of the child's residence or that court has initial jurisdiction; and in American Samoa, Florida, Massachusetts, New Jersey, and Texas, there is no provision in the juvenile code. (It is important to note that rules of court frequently provide for venue and transfer; this is true, for example, in South Carolina.)

table 1

JUVENILE COURT SYSTEMS

Court System	State(s)
Family and Domestic Relations Court	Delaware, Hawaii, New York, Rhode Island, South Carolina
Juvenile and Domestic Relations Court	New Jersey, Virgin Islands Virginia
Independent Juvenile Court	Utah, Wyoming
Court of Common Pleas	Ohio, Pennsylvania
Juvenile Division of Probate Court	Michigan
Circuit and District Courts, concurrently	Alabama
Circuit and Magistrate Courts, concurrently (the latter have limited jurisdiction and no authority to confine)	West Virginia
Independent Juvenile Court or Superior Court judge sits as Juvenile Court judge	Georgia
County Court	Arkansas
Trial Division of High Court	American Samoa
Juvenile Division of District Court plus Juvenile Court for specific counties (only Denver County in Colorado)	Colorado and Massachusetts
Each county chooses which court is Juvenile Court[1]	Texas
Independent Juvenile and County Courts	Nebraska, Tennessee
Judges are assigned juvenile jurisdiction plus there are separate provisions for specific counties	Wisconsin
Special Juvenile Courts or Family Courts in specific parishes; where these have not been established, District Courts have jurisdiction in parishes within their districts and Parish Courts plus City Courts have concurrent jurisdiction with District Courts only within their Constitutionally established jurisdictional boundaries	Louisiana
District Court is Juvenile Court in specific counties; in counties of not more than 200,000 (and in St. Louis County), the Probate Court handles juvenile matters	Minnesota
Youth Court division of the Family Court or the County Court or the Chancery Court or certain Municipal Courts	Mississippi
Trial division of the High Court or the District or Community Courts	Trust Territories
Juvenile cases are heard in District Court by a judge or judges who volunteer to specialize in juvenile cases. Where no judge volunteers to specialize, the chief District Court judge assigns individual judges to serve in Juvenile Court on a rotating basis.	North Carolina

[1]Note: This is true of other states also, that is, the size of the county or various other factors may determine which court sits as the juvenile court in a given area of the state. For example, in Nebraska, in counties of 30,000 or more, if the electorate agrees, an independent juvenile court may be established.

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2 Waiver To The Adult Criminal Court

Waiver refers to the process by which a juvenile over whom the juvenile court has jurisdiction is transferred to the adult criminal court. Most authorities agree that waiver is the most critical stage of the juvenile justice process.[4] At this point, a juvenile may lose the parens patriae protection of the juvenile court (inadequate as some authorities feel is is) including the juvenile court's emphasis on treatment and rehabilitation, and the protection against public disclosure of the juvenile's involvement with the system. Once transferred to the criminal justice system with its emphasis on punishment (rehabilitation for the most part being ineffective), the juvenile will be subjected to contact with adult offenders in which the juvenile is in the weaker, more vulnerable position, and as with adult offenders, will become a less productive member of society. As an adult exoffender, s/he will no doubt feel the hostility and fear and lack of trust of the public--the stigma of criminal prosecution--reflected primarily in limited opportunities for employment. Waiver thus increases the chances that the juvenile offender will continue in the criminal justice system indefinitely having very little choice or opportunity to do otherwise. (A possible solution to this problem, given the fact of waiver, is to enact special provisions for juveniles as to disposition. For example, one source indicated that in Illinois, once a juvenile is found guilty by the adult court, s/he is treated as a juvenile thereafter. For provisions of this type, a state's Corrections Code should be consulted.)

On the other side of the waiver issue, is the concern for the protection of the public from violent juveniles. Given the constantly rising crime rate, the public understandably favors harsh treatment for those juveniles who may threaten their lives and their property. However, it is important to consider what the ultimate effect of transfer is. If transfer produces an even more threatening adult offender, alternative juvenile programs where there exists an opportunity to rehabilitate is no doubt the more practical goal. Furthermore, if some juveniles are to be waived surely they should be individuals who are violent and dangerous and not those who have committed property offenses.

This concern is reflected in the United States Supreme Court's suggested criteria on which a decision to waive should be based in Kent v. United States (1966). That is, the juvenile court judge should consider, among other factors, "whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner" and "whether the alleged offense was against persons or against property, greater

weight being given to offenses against persons especially if personal injury resulted."[5]

Significant elements of the waiver process discussed subsequently include: (1) the minimum age at which a juvenile can be tried in or transferred to the adult court; (2) when the criminal court is required to transfer juveniles to the juvenile court and those situations, such as when the offense alleged is murder, when waiver from the juvenile court is mandatory; or (3) whether the juvenile is guaranteed a hearing to determine whether s/he should be transferred and what grounds for waiver are to be considered by the juvenile court judge; (4) whether the prosecutor is required to request waiver; and (5) whether the juvenile has a right to waiver.

A. Minimum Age for Treatment as an Adult

The following table indicates the minimum age in each state, if any, at which a juvenile can be tried in or transferred to the adult criminal court. The lowest possible minimum age is noted--in several states, the age differs depending on the seriousness of the alleged offense (this is indicated for some states). For example in Tennessee, the minimum age is 15 for certain serious offenses; otherwise, it is 16.

Minimum Age	States
10	Indiana (age 10 for murder; 15 for heinous or aggravated offenses; 16 for Class A/B felonies); South Dakota
13	Georgia, Illinois, Mississippi
14	Alabama, Colorado, Connecticut, Delaware, Florida (no minimum age if alleged crime is punishable by death or a life sentence), Iowa, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, North Carolina, Pennsylvania, Utah
15	District of Columbia, Idaho, Louisiana, Michigan, New Mexico, Ohio, Tennessee, Texas, Virgin Islands (mandatory transfer for certain offenses if over 15 otherwise no minimum age), Virginia
16	American Samoa, California, Guam, Hawaii, Kansas, Montana, Nevada, North Dakota, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina (no minimum age for murder and rape); Trust Territories, Vermont, Wisconsin

Of the states not listed, either there is no provision for transfer or no minimum age is specified, or the law is unclear or the rules of court, not the juvenile code, provide for transfer.

B. Mandatory Transfer

1. Transfer from the Criminal to the Juvenile Court

In most states, the criminal court does not have jurisdiction in any cases involving juveniles over whom the juvenile court has jurisdiction. Consequently, if a juvenile is wrongfully

prosecuted as an adult, the criminal court is required to transfer the juvenile to the juvenile court. If, however, the juvenile court does not have jurisdiction over certain juveniles, they will be treated as adults. For example, many juvenile codes exclude traffic offenders from the juvenile court's jurisdiction, or the definitions may not include certain juveniles as in Colorado, where the definition of delinquent child does not include those over 13, charged with a serious offense; or in Mississippi where delinquent act does not include offenses punishable by life imprisonment or death. It is important therefore to scrutinize the definitional provisions of the codes to discover who is being excluded from the protective wing of the juvenile court. Many juveniles may be in jails, commingling with adults, because their alleged offenses are not within the jurisdiction of the juvenile court. Any protective provision of the code prohibiting the jailing of children may be meaningless for those juveniles not included within the jurisdiction of the juvenile court.

In addition to the exclusion of traffic and other offenses, there may be another system whereby the juvenile court cannot prevent certain juveniles from being automatically treated as adults and processed through the adult criminal court. For example, in Arkansas, the prosecutor decides which court to file charges in. In the District of Columbia, Maryland, and Nevada, the criminal court is required to transfer unless a capital or life term offense is involved and then it must retain jurisdiction. In both Georgia and Pennsylvania, the criminal court is required to transfer unless a capital offense is involved and then it may retain jurisdiction.

2. Transfer from the Juvenile Court to the Criminal Court

In most states, the juvenile court is not required to transfer any juveniles within its jurisdiction to the criminal court. Of those states which require transfer, Delaware, North Carolina, Pennsylvania, and the Virgin Islands require transfer when a capital and/or life term offense is involved. As an example of a variation of the mandatory transfer provision, Florida law provides that a child of any age charged with a violation of Florida law punishable by death or by life imprisonment must be subject to the jurisdiction of the juvenile court unless and until an indictment on such charge is returned by the grand jury. When an indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as if s/he were an adult. Of these states with mandatory transfer provisions, there may be a minimum age requirement as, for example, in the Virgin Islands where the juvenile must be 15 for mandatory waiver. There may be other requirements also as in Delaware, where the juvenile court is required to transfer when a capital or life term offense is involved, and where the juvenile is 16 and not amenable to the rehabilitative juvenile process.

C. Waiver Hearing and Grounds for Transfer

1. Waiver Hearing

The United States Supreme Court decision, Kent, established the need for a waiver hearing before a juvenile can be waived to the adult criminal court. For the juvenile, the waiver hearing is of the utmost importance. It may represent his or her only opportunity to remain within the

juvenile justice system. It may be the last chance a juvenile has to receive treatment and rehabilitation.

In most states, a waiver hearing is statutorily guaranteed. However, in several states* the requirement of a hearing is either circumvented because for example, the prosecutor may bring charges initially in the adult court or the law is not clear or waiver is not provided for and/or it is provided for by the rules of court. (Provision by rules of court may have the same stature in legality as do the statutes, as for example, in Arizona. As provided by court rules in Arizona, at any time prior to an adjudication hearing the juvenile probation officer or the county attorney may request a transfer hearing to determine if the child should be tried in the criminal court as an adult.)[6] In addition, although a hearing may not be provided for in these states, there may be a provision for a "full investigation," as in Guam, which pursuant to case law includes a mandatory hearing. Or, the juvenile court may have no authority to waive a juvenile to the criminal court as in New York and Vermont. In American Samoa, there is no provision for transfer but the statute provides that:

> An offender 16 years of age or over may...be treated in all respects as an adult if, in the opinion of the court, his physical and mental maturity so justifies.[7]

(The Trust Territories have a similar provision.) In Nebraska, where the prosecutor chooses the forum initially, a hearing is guaranteed only on the juvenile's motion to be transferred from the adult criminal court to the juvenile court.

*American Samoa, Arizona, Arkansas, Florida (for 16 and 17 year olds only), Guam, Nebraska, Nevada, New York, Rhode Island, South Carolina, Trust Territories, Vermont, Virgin Islands.

2. Grounds for Transfer

Given the importance of the waiver hearing, the criteria used to make a decision as to transfer are critical. Due process and equal protection require objective, fair standards in the juvenile court judge's appraisal of why this juvenile should be treated differently from other juveniles.[8]

Of those states providing for waiver, most also provide grounds upon which the juvenile court bases its decision whether or not to transfer the case. The most common criteria include: (1) lack of rehabilitation or suitable facilities or services for the juvenile charged; (2) the ability of the juvenile justice system to rehabilitate the child; (3) the best interests of the child and the public; (4) the seriousness of the offense; (5) protection of the public; (6) whether the juvenile probably committed the offense; (7) the juvenile's record and history (and probable cause of behavior), his or her physical and mental maturity, demeanor, and age; and (8) whether the juvenile is commitable to a mental institution or is retarded or insane. In at least one state, Missouri, the decision is based on the judge's personal discretion only.

D. Prosecutorial Request of Transfer

Central to the waiver issue is not only whether a juvenile has an impartial hearing and a transfer decision based on objective, specific criteria, but also, who requests the transfer. Does one individual--the prosecutor who may

be motivated by racial, political, or other reasons--have sole authority in initiating waiver?

In over 80 percent of the states statutorily providing for transfer, the prosecutorial request of transfer is not required. In Alabama, Colorado, the District of Columbia, Indiana, Maine, Michigan, Montana, Texas, and Virginia, the prosecutor is required to request transfer otherwise it is not an option. The situation is even more serious, because the decision is more arbitrary and unchecked by the juvenile court, in Arkansas and Nebraska where the prosecutor chooses the forum and there is no provision for waiver. (Note that in Arkansas, the child must be over the age of 14 for the prosecutor to choose to file charges in the criminal court.) In Wyoming, while prosecutors are not required to request transfer, they do have the opportunity to choose the forum. In West Virginia and Florida, the prosecutor must request waiver unless the juvenile makes the demand. In Guam, for certain offenses, a minor is automatically certified for prosecution as an adult unless s/he petitions for treatment as a juvenile.

E Juvenile's Right to Waiver

Although waiver to the criminal court is usually viewed as negative because a young person is treated as an adult (punished) and thus loses the parens patriae protection of the juvenile court,

> Such an alternative may be of some tactical significance to the juvenile's attorney. For certain offenses, dismissal or conviction on a lesser charge, or a shorter sentence, or probation may be more easily obtained in the criminal system where the accused has a right to jury trial.[9]

Further, if the state has the power to determine whether or not a juvenile should be treated as an adult, surely the individual in a democratic society should have a similar choice.

However, only 16 states give the juvenile offender the right to be tried as an adult for all or specific offenses, the right to motion for transfer, or some other system whereby the juvenile may choose not to be under the juvenile court's jurisdiction (for example, in Alabama, a person charged with a crime committed in his or her minority may be tried as a youthful offender by choice rather than as an adult).*

*Alabama, Florida, Guam, Idaho, Illinois, Iowa, Louisiana, Maryland, New Hampshire, New Jersey, North Dakota, Pennsylvania, Virginia, Washington, West Virginia, Wisconsin.

The age at which a juvenile may request transfer or otherwise choose to be treated as an adult or to not fall within the jurisdiction of the juvenile court ranges from 13 in Illinois to 14 in Iowa, New Jersey, and Pennsylvania to 15 in Idaho, Louisiana, and Virginia to 16 in West Virginia and Wisconsin, and 17 in New Hampshire and North Dakota. No age is specified in Guam and Washington.

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3 Maximum Age Of Juvenile Court Jurisdiction

The statutes of each state and territory provide for a maximum age for jurisdiction of the juvenile court "...below which children are deemed subject to the ameliorative processes of the court. Indeed, 'child' is generally defined as a person under the maximum age establishing the court's jurisdiction."[10] For example, in Connecticut the first section of the juvenile code ("Definitions") provides that:

> "Child" means any person under sixteen years of age;
> "youth" means any person sixteen to eighteen years of age...[11]

The second section ("Juvenile matters defined, authority of court") provides:

> Juvenile matters include all proceedings concerning uncared-for, neglected or dependent children and youth and delinquent children within this state...[12] (emphasis added)

The maximum age provided for is somewhat misleading, however, unless one also considers whether in the case of juvenile offenders the maximum age listed refers to the age at apprehension or detention or the age at the time of the alleged offense. For example, a juvenile may have been under 18 (maximum age) at the time of the offense but 19 by the time s/he is charged; many states provide that these juveniles are still within the jurisdiction of the juvenile court. For example, Alabama's definition of "child" means "an individual under the age of 18 or under 19 years of age and who committed the act of delinquency with which he is charged before reaching the age of 18 years.[13]

Table 2 indicates the maximum age for all children in each state and territory and it indicates for juvenile offenders whether the maximum age refers to the juvenile's age at the time of apprehension or when the offense was alleged to have been committed. Where there is no specific statutory provision, age at apprehension has been assumed.

As Table 2 indicates, in most states, the maximum age is 18 for all groups of children and in the majority of states the maximum age for a juvenile offender is determined by the age at the time the alleged offense was committed.

Only one state, New York, continues to prescribe different jurisdictional ages for female (18) and male (16) "persons in need of supervision." In the past, when other states distinguished similarly between males and females, the statutes were successfully challenged on equal protection grounds.[14]

A. Juvenile Court Jurisdiction Past Maximum Age

A related issue is, to what age beyond the maximum age a juvenile court has jurisdiction over a juvenile, once the juvenile is brought within the court's jurisdiction. In other words, following final disposition of a juvenile, to what age may the court and/or the institution of commitment control his or her life.

Table 3 indicates when the juvenile court jurisdiction of each state ends and whether institutionalization can extend beyond the age of 21 or past a juvenile's minority.

As the table indicates over one-half of the states have set 21 as the jurisdictional age limit (this may not apply to all groups of children). Thus, potentially, in these states if a child is brought into the juvenile justice system at age 13, s/he may be institutionalized until 21, unless there is a statutory limit on length of institutionalization.

Obviously, this is an important area of potential reform. Much attention generally has been paid in the juvenile codes to the pre-adjudicatory stages of the system. More protections exist now following Supreme Court rulings and the enactment of the JJDP Act to ensure that a juvenile is not held indefinitely in detention--time limitations have been set (which will be discussed subsequently), for example, between the time a juvenile is brought into custody and the detention hearing and between the detention and adjudication and disposition hearings. However, very little has been done in the codes limiting the length of time a juvenile can spend in an institution. As the Disposition Section indicates, in over half of the states, institutionalization is for an indefinite time. It makes little sense to speed juveniles through the pre-disposition system and then to allow them to spend an unlimited time in an institution. This lack of statutory action in effect negates any due process guarantees which a juvenile has in the pre-adjudicatory process.

table 2

MAXIMUM AGE OF JUVENILE COURT JURISDICTION

State	Maximum Age	Age at Apprehension/Offense[1]
Alabama	18	Offense
Alaska	18	Apprehension
American Samoa	18	Apprehension
Arizona	18	Apprehension
Arkansas	18	Apprehension
California	18	Offense
Colorado	18	Offense
Connecticut	18 for dependent, neglected, abused juveniles 16 for delinquents and children in need of supervision	Apprehension
Delaware	18	Apprehension
District of Columbia	18	Offense
Florida	18	Offense
Georgia	18 for dependent, neglected, abused juveniles 17 for children in need of supervision 21 for delinquents if act committed before 17	Offense
Guam	18	Apprehension
Hawaii	18	Offense
Idaho	18	Offense
Illinois	18 but for delinquents if act committed before 17	Offense
Indiana	18	Offense
Iowa	18	Offense
Kansas	18	Apprehension
Kentucky	18	Offense
Louisiana	17	Offense
Maine	18	Offense
Maryland	18	Offense
Massachusetts	18 for dependent, abused, neglected juveniles 17	Offense
Michigan	17	Apprehension
Minnesota	18	Offense
Mississippi	18	Apprehension
Missouri	17	Offense
Montana	18	Offense
Nebraska	18 for dependent, abused, neglected juveniles and children in need of supervision 16 for delinquents	Offense
Nevada	18	Offense
New Hampshire	18	Offense

State	Maximum Age	Age at Apprehension/Offense
New Jersey	18	Apprehension
New Mexico	18	Apprehension
New York	16 for delinquents and male children in need of supervision	Offense
	18 for female children in need of supervision and all dependent, abused, neglected juveniles	
North Carolina	18 for dependent, abused, neglected juveniles	Apprehension
	16 for delinquents and children in need of supervision	
North Dakota	18	Offense
Ohio	18	Offense
Oklahoma	18	Apprehension
Oregon	18	Apprehension
Pennsylvania	18	Offense
Puerto Rico	18	Offense
Rhode Island	18	Apprehension
South Carolina	21	Offense
	17 for delinquents	
South Dakota	18	Offense
Tennessee	18	Apprehension
Texas	18 for dependent, abused, neglected juveniles	Offense
	17	
Trust Territories	18	Offense
Utah	18	Offense
Vermont	17 for children in need of supervision and dependent, abused, neglected juveniles or if act of delinquency committed after turning 12 and before 16	Offense
Virgin Islands	18	Offense
Virginia	18	Offense
Washington	18	Apprehension
West Virginia	18	Offense
Wisconsin	18	Apprehension
Wyoming	19	Offense

[1]Note: This refers to whether the statute provides for age at the time of offense or at the time of apprehension for establishing juvenile court jurisdiction - see text for explanation.

table 3

JUVENILE COURT JURISDICTION PAST MAXIMUM AGE

State	End of Juvenile Court Jurisdiction	Institutionalization Beyond 21 or Minority
Alabama	21	No Provision
Alaska	19	No
American Samoa	No Provision	No Provision
Arizona	21	No
Arkansas	18 for delinquents and others who have committed crime under laws of state; otherwise, no provision	No for delinquents; otherwise, no provision
California	21 unless juvenile at least 16 when serious offense committed and s/he is committed to the Youth Authority, then the age is 23	Yes
Colorado	21	No Provision
Connecticut	No Provision	No for dependent, abused, neglected juveniles
Delaware	No Provision	No Provision
District of Columbia	21	No
Florida	19 for delinquents 18 for others	No for dependent, abused, neglected juveniles and children in need of supervision
Georgia	21	No
Guam	18	No
Hawaii	19	No Provision
Idaho	21 18 for dependent, abused, neglected juveniles	No
Illinois	21	No
Indiana	21	No
Iowa	No Provision except all orders automatically terminate at 18 for delinquents	No for delinquents; No Provision for others
Kansas	21	No
Kentucky	18	No

State	End of Juvenile Court Jurisdiction	Institutionalization Beyond 21 or Minority
Louisiana	18 for those under 13 and committed to Department of Corrections plus dependent, neglected, abused juveniles and children in need of supervision 21 for delinquents	No
Maine	21 for delinquents; otherwise, no provision	No
Maryland	21	No
Massachusetts	18 for delinquents and children in need of supervision	Yes if dangerous to public because of mental or physical deficiency, disorder, or abnormality; otherwise No
Michigan	19	No Provision
Minnesota	21	No Provision
Mississippi	20	No
Missouri	21	No
Montana	21	No
Nebraska	No Provision	No
Nevada	21	No Provision
New Hampshire	19 for delinquents 21 for dependent, abused, neglected juveniles	No for delinquents; otherwise, no provision
New Jersey	21 No Provision for dependent, abused, neglected juveniles	Yes for homicide only
New Mexico	18 21 for delinquents	No
New York	21 No Provision for dependent, abused, neglected juveniles	No
North Carolina	18	No
North Dakota	20	No
Ohio	21	No
Oklahoma	18 19 for delinquents	No for delinquents

State	End of Juvenile Court Jurisdiction	Institutionalization Beyond 21 or Minority
Oregon	21	No
Pennsylvania	No Provision	No Provision
Puerto Rico	21	No Provision
Rhode Island	21	No Provision
South Carolina	21	No
South Dakota	21	No
Tennessee	21	21
Texas	17 21 for dependent, abused, neglected juveniles	No
Trust Territories	No Provision	No Provision
Utah	21	No Provision
Vermont	Age of Majority	No
Virgin Islands	21	No
Virginia	21	No
Washington	21 for delinquents; otherwise, no provision	No
West Virginia	18 19 or 20 for delinquents	No
Wisconsin	No Provision	No
Wyoming	21	No

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4 Types of Juveniles Within The Juvenile Court's Jurisdiction

The juvenile court legislation of each state and territory typically defines three major groups of children within the jurisdiction of the juvenile court: delinquents, children in need of supervision, and dependent, abused, or neglected juveniles. The juvenile court in all of the states and territories (except the Trust Territories in which the juvenile court apparently does not have jurisdiction over dependent, abused, or neglected juveniles) has jurisdiction over these three groups of children.

A. Delinquents

There are three major categories of delinquents within the court's jurisdiction: (1) A juvenile who has committed a delinquent act which is defined as conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.*

(2) A juvenile who has committed a delinquent act which may in addition to adult offenses include some status offenses (i.e., offenses committable by children only such as curfew violations and under-age drinking violations) because in the juvenile code delinquent act is generally defined as a violation of law.**

(3) A juvenile who has committed a delinquent act which is defined as including all adult-type and juvenile-type offenses plus incorrigibility, waywardness, and so forth.***

*Delaware, Idaho, Iowa, Kansas, Kentucky, Maryland, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Tennessee, Virginia, Washington

**Alabama, Alaska, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Guam, Hawaii, Illinois, Louisiana, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virgin Islands, Wisconsin, Wyoming

***American Samoa, Connecticut, Indiana, Minnesota, Trust Territories, West Virginia

As indicated above, six states and territories, American Samoa, Connecticut, Indiana, Minnesota, the Trust Territories, and West Virginia, specifically include children in need of supervision in their delinquent categories. For example, Connecticut's law states:

> [A] child may be found "delinquent"
> (a) who has violated any federal or state law or municipal or local

> ordinance, or (b) who has without just cause run away from his parental home or other properly authorized and lawful place of abode, or (c) who is beyond the control of his parent, parents, guardian or other custodian or (d) who has engaged in indecent or immoral conduct, or (e) who has been habitually truant or who, while in school has been continuously and overtly defiant of school rules and regulations, or (f) who has violated any lawful order of the superior court.[15]

The inclusion of status offenses within the delinquent category is significant because it could mean that juveniles who have committed minor offenses such as curfew and truancy violations are treated no differently than juveniles who have committed crimes such as burglary and rape. However, although some codes do place these groups of children in the same category, it is important to note that there may be other provisions for separate treatment especially at the disposition stage.

Fifteen states clearly exclude children in need of supervision from their delinquent category: Delaware, Idaho, Iowa, Kansas, Kentucky, Maryland, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Tennessee, Virginia, and Washington. For example, New Hampshire's law states: "Delinquent" means a person who has committed an offense before reaching the age of 18 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult...[16]

States with this type of legislation thus progressively distinguish, at least in their definitional provisions, between the more serious juvenile offenders and those who are within the court's jurisdiction for an offense committable only by a child. Although states may distinguish between the two groups, however, treatment may be the same for both as in Idaho.

1. The Term, "Delinquent"

Unfortunately for the juveniles involved, the term, "delinquent," is used in most states. As discussed in the Standard Juvenile Court Act--which avoids using the term "delinquency" (and "neglect")--the terms or categories tend to detract from the individualized treatment of juveniles and are "always unnecessary, sometimes impracticable, and often harmful."[17] Labeling is harmful given the social stigma attached to the term "delinquent." Yet, only 13 states avoid use of the term: California, Guam, Hawaii, Idaho, Maine, Michigan, Missouri, Nebraska, Oregon, Puerto Rico, Utah, the Virgin Islands, and Washington.

Although this lack of labeling would appear to be in the best interests of the juvenile, it is questionable whether a juvenile can be treated as an individual, with or without labels, given the essential institutional quality of the system. In California, although the term "delinquent" is not used, such juvenile offenders are known as "602's". One wonders whether this is any more acceptable than the term "delinquent".

Additionally, as pointed out in the Standard Juvenile Court Act, although juveniles may be harmed by the categorization by the system, their parents trust the system more when there are clear categories--when their child's be-

havior is diagnosed and a form of treatment prescribed as efficiently as possible.[18]

2. Traffic Offenders

In many codes, some or all traffic offenses are not within the jurisdiction of the juvenile court which means that juveniles lose some significant protections (depending on the state involved) of the juvenile justice system. They may be treated as adults in the worst possible way: incarceration in the county jail.

On the other side of this issue though are the practical problems involved in having jurisdiction of traffic offenses in the juvenile court. As is pointed out in the Standard Juvenile Court Act, since it is likely that the juvenile court is at the district level covering one or more counties, time and distance in getting to hearings may create an unnecessary hardship for children and families.[19] A solution, however, may be to provide by statute for Juvenile Traffic Offenders, as is done in some states. Juvenile traffic offenders could be treated as adults but protected from the adult punishment system (with at least a prohibition on the jailing of such juveniles).

B. Children in Need of Supervision

In most of the 56 states and territories, this second category of juveniles within the juvenile court's jurisdiction is referred to as a "child (or juvenile) in need of supervision" or an "incorrigible child"* although some states omit the label. The definitions of this category include: (1) truant; (2) beyond control of one's parents, disobedient; (3) violation of a status offense; (4) one who is dangerous to himself or herself and others; and (5) runaways.

*Alabama, Arizona, Arkansas, California, District of Columbia, Guam, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Utah, Virgin Islands, Virginia, Wisconsin, Wyoming.

The following chart indicates states with more unique definitions of the children in need of supervision category:

States	Definition
Colorado and Missouri	Child's behavior or condition is dangerous to him/herself or others
Georgia	An "unruly" child is a truant, one who is disobedient, has committed a status offense, is a runaway, a loiterer after hours, patronizes any bar or possesses alcohol, or one who has committed a delinquent act and is in need of supervision but not of treatment or rehabilitation
Mississippi	A child in need of supervision is one who has reached 7 years old and is disobedient and ungovernable, truant, a runaway, or has committed a delinquent act
Rhode Island	A wayward child is a runaway, one who associates with the wrong

people, who leads an immoral or vicious life, is disobedient, a truant, or has violated the laws of the United States or a state or a city ordinance for the first time

Of the remaining states and territories, American Samoa, Connecticut, Indiana, Minnesota, the Trust Territories, and West Virginia specifically include some or all status offenses in their delinquent category. In Alaska, Delaware, Florida, Iowa, Pennsylvania, and Vermont, most or all children in need of supervision are in the same group as dependent, abused, or neglected juveniles. Similarly, in Washington, most children in need of supervision are included in the same group as dependent, abused, or neglected juveniles except that separate provision exists for runaways and juveniles in a situation dangerous to their physical safety. Maine is the only state in which the law does not apply to most children in need of supervision, which is the sanest approach given that this group of juveniles is brought into the system for the crime of not adjusting well to society's norms, of lacking a caring, supportive home life, or of simply being confused and unaware in their adolescent years. No doubt, most of us could have been classified as children in need of supervision at some point in our early years, but due to our race or economic class or some arbitrary standard were never processed through the juvenile justice system.

C. Dependent, Abused, or Neglected Juveniles

The final of the major groups of children within the juvenile court's jurisdiction is the dependent, abused, or neglected category. (It should be noted that this is a general term and does not indicate which children are in each state's definitions). This category includes the most innocent and more vicitimized of the children brought within the juvenile court's jurisdiction.

In most states, this group is termed "dependent," "abused," "deprived," "neglected," and "children in need of care (or services or assistance)," that is, destitute, homeless, abused, neglected, abandoned, without proper parental care or control, and not receiving ordinary proper care and attention.*

*Alabama, American Samoa, Arkansas, California, Connecticut, District of Columbia, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas

In several other states, this category of juveniles includes one or more of the above plus some children in need of supervision and/or delinquents** (see Table 4).

**Alaska, Arizona, Colorado, Delaware, Florida, Iowa, Maine, Minnesota, New York, North Carolina, Pennsylvania, Vermont, Washington, Wisconsin

Several states recognize a need to keep these children out of the court process as much as possible and thus have separate provisions for dependent, abused, or neglected juveniles. This is in accordance with national standards which

provide that family courts should not include so-called dependent children within their jurisdiction, that is, those juveniles in need of care or treatment through no fault of their parents or other persons responsible for their welfare. The standards suggest that these children be handled without official court intervention.[20] Some states go further and provide for social service agency care (juvenile court jurisdiction being the last resort) for all of these children including many more than those as provided in the standards who are dependent through no fault of their parents--and children in need of supervision and delinquents. For example, as mentioned above, Maine having taken the sanest approach in this area, provides that there is no juvenile court jurisdiction over dependent, abused, or neglected children or most children in need of supervision. A government department initially handles these juveniles; a district court decides emancipation and protective custody issues once a petition is filed with the court.

table 4

STATE CODE DEFINITIONS OF DEPENDENT, ABUSED, OR NEGLECTED JUVENILES

State	Definition
Alaska	Children in need of aid: habitually absent from home, refuses available care or has been abandoned; in need of medical attention; has suffered substantial physical or mental harm or is in danger of such harm; sexually abused; pressured into committing delinquent acts by parents
Arizona	Dependent child: needs proper and effective parental care and control; is destitute; neglected, abused; under age 8, having committed a delinquent or incorrigible act
Colorado	Neglected or dependent child: abandoned, mistreated, abused, lacks proper parental care, dangerous environment, homeless, run-away, beyond control of parent
Delaware	Dependent or neglected child: inadequate care and protection whether or not caused by the child's behavior; abused and neglected
Florida	Dependent child: abandoned, abused, neglected; run-away, truant, persistently disobeys the reasonable and lawful demands of parents and is beyond their control
Iowa	Child in need of assistance: abandoned, abused, neglected; has suffered/will suffer harmful effects because of conditions created by parent or the failure of the child's parent to exercise a reasonable degree of care in supervising the child; sexually abused; needs medical or mental treatment; without proper care; has committed a delinquent act as a result of pressure, guidance, or approval from a parent; victim of pornography; without a parent; parents want to give up child or child wants to give up parents
Maine	Abandoned, lost, seriously endangered in surroundings; left care of parents without consent
Minnesota	Dependent and neglected child: without parent or parental care; abandoned; occupation, behavior, condition, environment or associations are such as to be injurious or dangerous to child or others; delinquent as a result of parental neglect

State	Definition
New York	Abused, neglected, abandoned; incorrigible, ungovernable, habitually truant if clearly attributable to lack of parental care
North Carolina	Abused, dependent, or neglected juvenile: abused, risk of abuse, sexual abuse, emotionally damaged, commits delinquent acts with parental encouragement, direction, or approval; without parental care; without proper care, supervision or discipline; abandoned; without proper medical care or in dangerous environment
Pennsylvania	Dependent child: without proper parental care; abandoned; truant; disobedient, ungovernable; under 10 and has committed a delinquent act
Vermont	Child in need of care or supervision: abandoned, abused; without proper parental care; beyond control of parents
Washington	Dependent child: abandoned; abused, neglected; without parental care; in conflict with parents, refuses to remain in nonsecure residential placement, conduct evidences a substantial likelihood of degenerating into serious delinquent behavior if not corrected
Wisconsin	Children alleged to be in need of protection or services: without parental care; abandoned; abused; parent requests jurisdiction; truant from school or home; child requests jurisdiction, neglected; emotionally damaged, under 12 and has committed a delinquent act

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5 Taking A Juvenile Into Custody

Taking a juvenile into custody is one of the most significant steps in the juvenile justice process because of its impact on the juvenile. "Juveniles possess unique characteristics that demand a specialized form of handling. Youth are very impressionable, and when they first encounter the juvenile justice system they may feel all alone and view the police, as well as other forms of authority, as demanding, judgmental and hostile."[21]

The juvenile's initial contact with the juvenile justice system is typically through its representative, the police agency. Constitutional protections (the right of the people to be protected and safeguarded) and public policy which demands that those who commit criminal acts be prosecuted for their crimes form the basis of police authority in this area.[22] A problem arises when a criminal act is not involved--when the offense is that commitable only by a child or there is no offense involved at all but rather a case of child abuse or neglect.

Davis in the Rights of Juveniles suggests that a summons be issued by the juvenile court before any juvenile other than one who has allegedly committed an adult crime be taken into custody. On the other side of the issue, however, is the need for prompt action when for example a child is endangered in his or her environment, or otherwise in need of services.[23]

A possible solution is to have the police immediately refer a child who is in need of services to an appropriate social service agency (such as an intake service center). At the very least, as suggested by the National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, each state should "specifically set forth this authorization and guidelines for use of this authority. In other words...the scope of police authority to detain, arrest, or take juveniles into custody should be clearly based on statutes."[24]

As mentioned above, the decision to take a juvenile into custody is primarily a police decision.[25] In 23 states, a law enforcement officer or peace officer brings a juvenile into custody.* In 18 states, both a law enforcement and a probation officer, youth counselor, or other employee of the juvenile court brings the juvenile into custody.** The remaining states allow one or more of these to take a juvenile into custody with the addition of a representative of a government department (Alabama, Alaska, Arizona, Florida, Mississippi, North

Carolina, Tennessee) and/or any other adult (Colorado, Connecticut, Montana, New York, Oregon, Utah). An example of the latter is the Oregon provision which provides that a private person may take a child into temporary custody in circumstances where, if the child were an adult, the person could arrest the adult.[26] In American Samoa and the Trust Territories, there is no provision guiding the custody process of delinquents and children in need of supervision.

*Arkansas, California, Delaware, District of Columbia, Guam, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Nebraska, New Jersey, Puerto Rico, South Carolina, Vermont, Virgin Islands, Washington, West Virginia, Wisconsin, Wyoming.

**Georgia, Hawaii, Indiana, Louisiana, Maryland, Michigan, Missouri, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia

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A. Bases for Taking a Juvenile into Custody

In all the states and territories except American Samoa and the Trust Territories, a juvenile can be taken into custody pursuant to one or more of the following events:
(1) By court order (note that in New York, only a juvenile who has allegedly committed an adult offense may be taken into custody without a court order); (2) An alleged criminal act or status offense; (3) For the protection of the child from his or her environment, if s/he is ill, neglected, or dependent.

There are usually separate provisions in the juvenile codes providing for the issuance of court orders and emergency custody without a court order. However, most youth are taken into custody by a law enforcement officer without a court order or a warrant. Thus, as mentioned above there lies "an area of vast, almost unchecked police discretion" in deciding whether to refer a case to the juvenile court.[27]

B. Taking of Dependent, Abused, or Neglected Juveniles into Custody

In those states that have separate provisions for dependent, abused, or neglected juveniles,* the process is essentially the same as above with perhaps more emphasis on the role of a government department in the custody process. This emphasis conforms with national standards which provide that "When removal does occur, the child should be delivered immediately to a state agency which (a) Has been previously inspected and certified as adequate to protect the physical and emotional well-being of children it receives; (b) Is authorized to provide emergency medical care in accordance with specific legislative directives; and, (c) Is required to assure the opportunity for daily visitation by the parents or other adult caretakers".[28]

Depending on the state involved, the individual responsible for taking dependent, abused, or neglected juveniles into custody may be a peace officer, representative of a government social service department, a juvenile probation officer or intake worker, county attorney, physician, or other adult.

*American Samoa, California, Florida, Idaho, Iowa, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Texas, Virginia, Washington

C. Alternatives Available When a Juvenile is Taken into Custody

Typically, there are at least two alternatives available to the person (usually law enforcement) who takes a child into custody: release the child to his or her parents or guardian, with or without notice to appear before the court or deliver the child to a place of detention or shelter care (In some states, these are the only alternatives).* In Kentucky, there is a third alternative: a peace officer may take the juvenile to a court approved center offering voluntary services to children in lieu of taking the child to detention or releasing the child to his/her parents and release the child without filing formal charges. In Louisiana, the peace officer must place a truant in a school facility or receiving center designated by the parish school board or at least question the child as to his or her apparent truancy. In some states, in place of delivering a juvenile to a place of detention or shelter care, the person having custody of the child delivers her/him to a department officer, probation officer, or intake worker for a decision on whether the child should be detained (California, Florida (for dependent, abused,or neglected juveniles and children in need of supervision), Indiana, Maine, Montana (for dependent, abused or neglected juveniles), New Jersey, and West Virginia). Another alternative is to take the juvenile to the court or if necessary, to a medical facility. Other states allow a combination of all or some of the above alternatives.** American Samoa, Iowa, Massachusetts, New Jersey, New York, and Virginia provide that dependent, abused, or neglected juveniles are to be placed in protective custody, shelter care, or in the custody of a government department.

*Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Oklahoma, Oregon, South Dakota, Washington.

**Alaska, Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Kansas, Maryland, Michigan, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virgin Islands, Virginia, Vermont, Wisconsin, Wyoming.

D. Authority for Detention

Although typically a peace officer brings a juvenile into custody, s/he may not have the authority to make a decision to detain the juvenile pending the juvenile court hearing or more likely, s/he will share that authority with others. In most states, it may be one or more of the following who has the authority to detain a juvenile once s/he has been taken into custody: the juvenile court, an intake officer, probation officer, representative of a government agency, youth counselor, or law enforcement officer. In Connecticut, Michigan, New Hampshire, Vermont, and Virginia and Washington (for dependent, abused, or neglected juveniles only), only the juvenile court can authorize detention or shelter care. In Delaware, any of those listed above may authorize detention plus any judge of any court (including justices of the peace). There is no provision or the law is unclear in American Samoa, Ohio, and the Trust

Territories.

As with the initial custody decision, there is a good deal of controversy as to who should have the authority to detain a juvenile prior to the detention hearing. National standards provide that in the case of an arrested juvenile who is brought to a juvenile facility, the intake worker should make any subsequent detention/release decisions subject to review by the juvenile court.[29] This is perhaps the most practical approach given that the court is not always available to make such emergency decisions and that the intake workers are more experienced with working with juveniles in these situations. Review by the juvenile court would presumably check any arbitrary use of authority by the intake workers.

E. Notification to Parent of Detention or Shelter Care

National standards provide as a procedural requirement that a parent be notified of the arrest of a juvenile. Further, "if the arresting officer has been unable to contact a parent, the intake official should make every effort to effect such contact. If the official decides that the juvenile should be released, he or she may request a parent to come to the facility and accept release" (see the following subdivision as to release on recognizance).[30] Consistent with this standard, the majority of states statutorily require that a parent or guardian be notified that his or her child is in custody.

However, on the other side of the issue, as pointed out in the commentary to the standards, is the situation where due to intra-family conflict, a juvenile does not want his or her parents notified. Should the juvenile have the right to prevent notification? The commentary suggests that this decision be left to the court--the prevailing view being that "arresting officers and intake officials should make every effort to contact the parents of an accused juvenile."[31]

This issue is somewhat analogous to the minor's abortion decision in which the court decides whether or not a minor is mature enough to make the decision herself precluding the veto power of her parents. Here, the court could decide whether or not a juvenile is mature enough not only to prevent notification but perhaps to choose emancipation--this alternative is available in a limited number of states.

F. Bail Provision and Release on Recognizance (Promise to Appear)

Although the majority of states do not provide for bail for juveniles, they do provide for release on the parent's, guardian's, custodian's, or in addition, in Arkansas, California, Delaware, Maine and Nebraska, the child's promise to appear at juvenile court hearings. Of those states allowing bail for juveniles* some allow it for all groups of children (Louisiana, for example), some for only adult-type offenders, some for both adult-type offenders and children in need of supervision, or some if the juvenile is over a certain age. Of those states with separate laws for dependent, abused or neglected juveniles, only California, Montana, and New York provide for release on the parent's or child's recognizance.

As a final note, although bail may not be provided for specifically in the statutes, court interpretation of a statute may provide the right. As in Maine, for example, where the court stated in State v. Gleason, Me., 404A.2d 573 (1979), "The Maine Juvenile Code does not proscribe release on money bail. In permitting release 'upon such other prescribed conditions as may be reasonably related to securing the juvenile's presence in court' the Code impliedly empowers the Juvenile Court to release a juvenile on simple money bail." (582)

*Arkansas, Colorado, Connecticut, Delaware, Georgia, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Oklahoma, South Dakota, Tennessee, Vermont, Virgin Islands, Virginia, Washington, West Virginia.

G. Criteria for Detention

According to the Basic Principles of the Institute of Judicial Administration-ABA's Juvenile Justice Standards:

> Restraints on the freedom of accused juveniles pending trial and disposition are contrary to public policy. The preferred course in each case should be unconditional release.[32]

The Standards provide further that a minimal category of juvenile offenders only may be detained: (1) those charged with murder, (2) those on conditional release (pretrial release, or probation or parole) whose release may be revoked for misconduct, (3) escapees from post-trial placement facilities, and (4) those whose demonstrated record of flight makes it likely that they would fail to appear in court if released.[33]

The detention criteria of most states are unfortunately not this specific and limited. The most frequently listed criteria to be considered by the person initially deciding whether or not to detain a juvenile include all or a combination of the following:

1. For the juvenile's immediate welfare or for the protection of the community.
2. No parental care for the juvenile.
3. To ensure a juvenile's presence at the juvenile court hearings.
4. The seriousness of the offense and the juvenile's past record.*

*Alabama, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wyoming.

Although these criteria appear fairly general, the statutes of Louisiana, Missouri, Nevada, Oklahoma, and West Virginia are much more general using language such as when it is impracticable, inadvisable, or inappropriate to release a juvenile. (Although there may be no criteria for use by law enforcement, the court may be required as in Louisiana to consider the above criteria before it can authorize continued custody.) This type of language gives much more discretion to the law enforcement officer or whoever takes the child into custody: the decision is much more arbitrary than when specific criteria are listed. The codes of the District of Columbia, Iowa, Montana, New Jersey, and Wisconsin, however, enumerate detailed and different criteria for detention or shelter care thus attempting to ensure a less arbitrary,

more fair decision for all of those concerned. Unfortunately, though, as many as 17 states do not specify criteria for the initial detention decision in their juvenile codes.*

*Alaska, American Samoa, Arizona, Arkansas, Connecticut, Guam, Illinois, Kansas, Kentucky, Massachusetts, New York, Oregon, Puerto Rico, Rhode Island, South Carolina, Trust Territories, Virgin Islands.

6 Place Of Detention

This section of the report presents information as to the possible places of detention for a juvenile before and during the adjudicatory stage of the juvenile court proceedings. The primary focus is whether or not juveniles can be held in juvenile detention facilities and adult jails.

A. Juveniles Held in Juvenile Detention Facilities and Jails

Much has been written about the deplorable condition of our country's jails. At present, there is a growing movement to do more than require separation of juveniles from adults but rather to totally prohibit the placement of juveniles in adult jails. Streib has written:

> Our county jails are the worst examples of incarceration units, are generally in the worst state of repair, offer the fewest services to children, and have the fewest facilities for inmates. To believe that such an institution will instill respect in a child for the majesty of law is foolish. It is equally foolish to believe that a child in such a depressing, hostile, antihuman environment, devoid of counselors, parents, friends, or any manifestations of normal society, would resolve to begin acting less hostile, more human, and relate to normal society in a more acceptable manner.[34]

Even juvenile detention centers, if they are not within an adult jail building which is often the case, are so like jails as to be indistinguishable to the young people who are housed within them.[35]

Table 5 indicates whether a juvenile may statutorily be held in juvenile detention facilities or jails in a given state or territory.

1. Deinstitutionalization of Children in Need of Supervision

A major objective of the JJDP Act is to get juveniles who have not engaged in criminal conduct out of adult jails and juvenile detention facilities. Many groups have spoken out in favor of deinstitutionalization, the strongest statements being issued by the National Coalition for Jail Reform which has stated:

> The Coalition finds no justification for placing youths charged with or adjudicated on the basis of status offenses in adult jails and calls for

an immediate halt to the practice. Subjecting youth not involved with criminal behavior to the deprivation of liberty is a harsh, unjust, and inhumane response to the needs of those youth and the community. By definition, the behaviors or attitudes in question do not present a threat to people or the property of others. The frequency of such behaviors seems to indicate that they are in fact incidental to the process of growing up. Indeed, in many instances, the actions in question appear to be a reasonable response to unhealthy situations, as is exhibited by an abused youngster "running away" to escape a situation which represents a threat to his or her well-being. Instead of jailing status offenders, a full range of alternatives is needed, including improved services for youth in their own homes, improved school-related services, crisis centers, temporary shelter care, individual and group counseling services for youth and parents, and strengthened community tolerance.[36]

As Table 6A indicates, only Arizona, Maryland, Mississippi, Pennsylvania, and Rhode Island absolutely prohibit the jailing of juveniles.

As Table 5 indicates, Alabama, Delaware, Illinois, Iowa, Louisiana, Maine, Maryland, New Hampshire, New Jersey, New Mexico, Pennsylvania, and Washington do not allow the holding of children in need of supervision in juvenile detention facilities. Of these states, Alabama, Louisiana, Pennsylvania, and Maine do not clearly exclude all children in need of supervision from their delinquent categories. Thus some children in need of supervision may be detained. In the remaining states, however, there are no children in need of supervision in the delinquent categories; thus, there is total deinstitutionalization at least at the pre-disposition stages.

As Table 5 also indicates, as to the detention of dependent, abused, or neglected juveniles in juvenile detention facilities, the states are split. The codes of a majority of states are unclear as to the detaining of dependent, abused, or neglected juveniles in juvenile detention facilities. Although the statute in a given state may allow placement in detention facilities or may have no provision at all (note that both of these situations would result in a "yes" for detention in Table 5), in practice, a different situation may prevail. For example, in Hawaii, the statute provides that a child may be taken to a place of detention or shelter designated by the court. According to one state source, though, the court has designated the Department of Social Services, Child Protective Services Unit as the agency where all abused and neglected youths are physically taken. Court rules and procedures specifically prohibit the detainment of neglected, dependent, abused and emotionally disturbed minors at the detention center. If a child is suspected to be an abused child, s/he is referred to the DSS unit and not to the detention home by the police.

Following are sample deinstitutionalization provisions:

Louisiana
A child taken into custody for commission of a delinquent act shall be taken to a juvenile detention center. A child taken into custody as a child in need of supervision or care shall be taken to a shelter care facility.[37] (Shortly thereafter, "as soon as practicable," the court reviews this action and may authorize a less restrictive alternative.)

Kansas
Effective July 1, 1980: If the court orders a status offender to be committed to the custody of the secretary of social and rehabilitation services or otherwise orders a status offender to custody outside the child's home, the status offender shall not be placed in a facility other than a shelter facility...[38]

The New Jersey provision which follows contains strong, clear language and would seem to indicate complete deinstitutionalization; however, the title indicates that the section applies only at the disposition stage of the proceedings:

New Jersey
Title of section: Disposition of cases of juveniles in need of supervision. No juvenile in need of supervision shall be committed to or placed in any institution or facility established for the care of delinquent children or in any facility...which physically restricts such juvenile committed to or placed in it.[39] (There are other provisions in New Jersey law, though, that indicate children in need of supervision should not be placed in detention facilities.)

Finally, there is the Utah provision which appears to be a deinstitutionalization provision, but in actuality gives very little guidance to decision-makers as to when a child should be placed in detention:

Utah
A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility and shall not be placed in detention.[40]

2. Prohibition on Jailing Children
Because of the importance of the issue of children in adult jails, and the fact that most state codes contain separate provisions on the jailing of children, usually stated as a prohibition, a separate section on the jailing of children is included.

Although this issue has been of concern to reformers for many years, only Arizona, Maryland, Mississippi, Pennsylvania, and Rhode Island prohibit the placement of juveniles in adult jails. Of these states, Maryland's provision is the clearest:

> After January 1, 1978, a child alleged to be delinquent may not be detained in a jail or other facility for the detention of adults....[41]

In comparison to the preceding absolute prohibition, many state codes contain an absolute prohibition on jailing children under a certain age. Table 6A indicates that 18 states fall into this category (the number in parentheses indicates the maximum age): Colorado (14), Connecticut (16), District of Columbia (16), Guam (16), Illinois (16), Iowa (14), Louisiana (15), Michigan (15), Minnesota (14), Nebraska (14), New York (10), Oklahoma (12), Puerto Rico (16), South Dakota

(15), Utah (16), Virgin Islands (16), Virginia (15), and Washington (16). Following is an example of a prohibition under a specified age provision:

Illinois
No minor under 16 years of age may be confined in a jail or place ordinarily used for the confinement of prisoners in a police station.[42]

Other states, specifically, South Carolina and Texas appear at first glance to have an absolute prohibition but a close reading indicates ambiguity and possibly separation provisions only:

South Carolina
No child shall at any time be placed in a jail or other place of detention for adults, but shall be placed in a room or ward entirely separate from adults.[43]

Texas
...a child shall not be detained in or committed to a compartment of a jail or lockup in which adults arrested for, charged with, or convicted of crime are detained or committed, nor be permitted contact with such persons.[44]

Citizens interested in the enactment of legislation prohibiting the placement of juveniles in adult jails should consider statutes similar to that of Maryland which is clear and precise and leaves no room for differing interpretations. Another good sample provision, from the Institute of Judicial Administration-A.B.A. Juvenile Justice Standards Project, aimed specifically at the detention of juveniles during adjudication states:

> 10.2 Use of adult jails prohibited. The interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited.

The Maryland provision and Standard 10.2 above should be compared with the less clear, more ambiguous Arizona provision which is subject to the interpretation of each jurisdiction:

> A child, pending a hearing, shall not be placed in an apartment, cell, or place of confinement with adults charged with or convicted of crime.[45]

According to one state source, this law is interpreted by most jurisdictions as prohibiting the detention of a juvenile under any conditions in a city or county jail or any police operated holding facility. However, apparently, some jurisdictions interpret the law more literally and allow youth to be held in the facility but in a separate cell or section or wing of the facility. Thus, it is important to encourage enactment of legislation in this area which is clear and unambiguous.

Table 6 indicates the contents of the various jail provisions of each state. As the table indicates, most states require the separation of juveniles from adults in adult facilities at least during the pre-disposition stages. In fact, most states have provided for separation for many years prior to the JJDP Act. However, more recently, a significant number of states have enacted total prohibitions on the jailing of juveniles or at least have provided special, limited circumstances for when jailing is permissible.

3. Detention in State Youth Institution

Closely related to the issue of juveniles in juvenile detention facilities and jails is whether a juvenile can be placed in a state youth institution before a decision is made as to his or her disposition. In most states, it is unclear whether a juvenile may be detained in a state youth institution pending the juvenile justice process. In Guam, Kansas, Minnesota, Mississippi, Nebraska, New Hampshire, Pennsylvania, and South Carolina such a predisposition detention alternative is clearly a possibility.

In Kentucky, regional reception-diagnostic centers for the observation, study, and classification of juveniles committed to the Department for Human Resources may be used for the detention of juveniles, pending final disposition. In New Mexico, Rhode Island, and Utah, detention in a state youth institution is clearly not an alternative. In Florida, Maine, Massachusetts, Montana, Virginia, and Washington a state youth institution may not be used for the placement of dependent, abused, or neglected juveniles and in Florida, Maine, and Washington, this applies to children in need of supervision also.

B. Juvenile Facilities

1. "Secure" and "Nonsecure"--Statutory Distinction

It is the position of national standards that "a sufficiently wide range of nonsecure detention and nondetention alternatives should be available to decision makers so that the least restrictive interim status appropriate to an accused juvenile may be selected."[46]

This policy is evidenced in the codes of some states by a statutory distinction between "secure" and "nonsecure" detention facilities. Other provisions or the definitions themselves then specify which children are to be held in secure and which in nonsecure facilities.

As many as 36 states distinguish in some way between "secure" and "nonsecure" detention for juveniles,* the remaining 20 make no distinction in their juvenile codes. Of those 36 states that do distinguish, 24 define a detention facility as physically restricting or secure, and shelter care as physically unrestricting or nonsecure.** Table 7 indicates other ways in which state statutes distinguish between secure and nonsecure detention for juveniles.

*Alabama, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming

**Arizona, Arkansas, California, Colorado, District of Columbia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Montana, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming.

2. Statutory Provision for Juvenile Facilities

If the objectives of getting children out of adult jails, and providing as many nonsecure alternatives as possible are to be met, it is important that state legislatures statutorily provide for juvenile facilities.

Research of the juvenile codes revealed that many states are active in this area: Arizona, California, Delaware, Idaho, Indiana, Kentucky, Texas, and Utah all specifically require public detention facilities for all counties in the state. Delaware, Kansas, Oklahoma, Oregon, Missouri, and South Dakota require public detention facilities for populous counties only. Delaware, South Carolina, Nevada, and the Virgin Islands require public detention facilities in certain regions of the state or territory. Colorado requires a government department to establish and operate juvenile facilities, in addition to providing detention services. Nineteen states provide for the planning, construction, and authorization of juvenile facilities.* In Puerto Rico, detention facilities are required but limited to available facilities. In Idaho and Maine, a government department is required to provide shelter care facilities for emergency placements. Finally, Guam requires the Executive Branch to maintain facilities for the temporary or continuing care, custody, or detention, or commitment, of children.

*Alaska, Florida, Hawaii, Iowa, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, Ohio, Rhode Island, South Dakota, Virgin Islands, Virginia, Wyoming

C. Segregation of Groups of Children Prior to Disposition

Segregation of the major groups of juveniles would seem to be an important objective for reformers of the juvenile justice system. No one wants dependent, abused, or neglected juveniles housed with "delinquent-type" individuals, nor children in need of supervision with "criminal-type" individuals. There is an impression that mixing these groups of juveniles is similar to throwing juveniles into jails, that is, that harmful contact will result.

However, in this area, a better approach is probably that of the I.J.A.-A.B.A. Juvenile Justice Standards Project that would prohibit those not charged with a crime from being held in secure detention facilities for accused juvenile offenders, but would allow those charged with a crime to intermingle with the other groups of children in nonsecure facilities.[47] Thus, the policy of using the least restrictive alternatives, given the particular individual involved, is followed.

Most states have no provision for segregating the major groups of children in detention or shelter care prior to disposition. The remaining states are charted in Table 8.

Although a statute may not require segregation of the major groups of children, it may provide for different holding facilities for various types of juveniles. The statutes of many states contain some provision along the lines indicated in Table 9.

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table 5

CAN JUVENILES BE PLACED IN DETENTION FACILITIES AND JAILS?

State	Delinquents		Children in Need of Supervision		Dependent, Abused, Neglected Juveniles	
	Detention	Jail	Detention	Jail	Detention	Jail
Alabama	Yes	Yes	No	No	No	No
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
American Samoa	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	No	Yes	No	Yes	No
Arkansas	Yes	Yes	No[1]	No[1]	No	No
California	Yes	Yes	Yes[10]	No	Yes[11]	No[11]
Colorado	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut	Yes	No	Yes	No	Yes	No
Delaware[12]	Yes	Yes	No	No	No	No
District of Columbia	Yes	Yes	Yes	No	No	No
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes[4]	Yes	No	No	No
Guam	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho[12]	Yes	Yes	Yes	Yes	Yes	Yes
Illinois	Yes	Yes	No	No	No	No
Indiana	Yes	Yes	No[2]	No[2]	No	No
Iowa[12]	Yes	Yes	No	No	No	No
Kansas[12]	Yes	Yes	Yes[3]	Yes[3]	Yes[3]	Yes[3]
Kentucky[12]	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	No	No	No	No
Maine	Yes	Yes	No	No	No	No
Maryland[12]	Yes	No	No	No	No	No
Massachusetts	Yes	Yes	Yes	No	No	No
Michigan	Yes	Yes	Yes	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes[5]	Yes[5]	No	No
Mississippi[12]	Yes	No	Yes	No	Yes	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	No	No
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes
Nevada	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire[12]	Yes	Yes	No	No	No	No
New Jersey[12]	Yes	No[6]	No[6]	No[6]	No	No
New Mexico[12]	Yes	Yes	No	No	No	No
New York[12]	Yes	Yes	Yes	Yes	Yes	Yes
North Carolina	Yes	Yes	Yes	Yes	No	No
North Dakota[12]	Yes	Yes	Yes	Yes	No	No
Ohio	Yes	Yes	Yes	Yes	Yes	Yes

State	Delinquents		Children in Need of Supervision		Dependent, Abused, Neglected Juveniles	
	Detention	Jail	Detention	Jail	Detention	Jail
Oklahoma	Yes	Yes[7]	No[2]	No[2]	Yes	Yes
Oregon	Yes	Yes	No[8]	No[8]	Yes[9]	Yes[9]
Pennsylvania	Yes	No	No	No	No	No
Puerto Rico	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	No	Yes	No	Yes	No
South Carolina	Yes	Yes	Yes	Yes	No	No
South Dakota	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee[12]	Yes	Yes	Yes	Yes	No	No
Texas	Yes	Yes	Yes	Yes	Yes	Yes
Trust Territories	Yes	Yes	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont	Yes	Yes[7]	Yes	No	Yes	No
Virgin Islands	Yes	Yes	Yes	Yes	Yes	Yes
Virginia[12]	Yes	Yes	Yes	Yes	No	No
Washington[12]	Yes	No	No	No	No	No
West Virginia	Yes	Yes	Yes	No	Yes	No
Wisconsin	Yes	Yes	Yes	Yes	No	No
Wyoming	Yes	Yes	Yes	Yes	No	No

NOTE: See Table 6 for a more detailed view of each state's jail provision.

[1]Once status is determined.

[2]Unless runaway.

[3]With 48-hour limitation before the detention hearing. Unless by court order with 24-hour limitation, following the detention hearing.

[4]With 18-hour limitation.

[5]With 24-hour limitation.

[6]For brief period, in a police station in a place apart from adults and one not designed to detain prisoners, to allow release to parent.

[7]For serious crimes, e.g., murder and treason in Vermont.

[8]Unless runaway or dangerous to self or others.

[9]For dangerous nonoffenders.

[10]With 24-hour limitation; runaways may be held for 72 hours.

[11]If physically dangerous to public.

[12]Delinquent category does not include status offenders.

table 6
JAIL PROVISIONS

State	Provision	Jail Provision Applies To:
Alabama	No prohibition but separate sections are required in a jail or other facility for the detention of adults if no other detention facilities available.	Alleged and adjudicated delinquents
Alaska	No prohibition but separate sections in a jail are required.	All children
American Samoa	No prohibition but separate sections are required.	Delinquents and children in need of supervision
Arizona	Absolute prohibition in an apartment, cell or place of confinement with adults charged with or convicted of crime (jail, prison).	All children (pending hearing)
Arkansas	Absolute prohibition for children in need of supervision except for initial 72-hour period to determine whether juvenile is a J.I.N.S.; separate sections required for delinquents.	Alleged and adjudicated delinquents and children in need of supervision
California	Absolute prohibition for children in need of supervision; separate sections required for those under 18, plus if no other proper and adequate facilities and by court order; for dependent, abused, neglected juveniles absolute prohibition unless no other provisions can be made and then separate sections are required for dependents who are physically dangerous to the public, court order required. Section applies to jails or lockups.	All children
Colorado	Absolute prohibition for those under 14; unless no other provisions can be made and then by court order and separate sections are required for those 14-15; no prohibition but separate sections required for those 16-17. Section applies to a jail, lockup, or other place used for confinement of adult offenders, or persons charged with crime.	All children
Connecticut	Absolute prohibition on placement in a community correctional center or lockup, or in any place where adults are or may be confined or in solitary confinement, if under 16.	All children

State	Provision	Jail Provision Applies To:
Delaware	May be placed in a jail, police station, cell, prison, workhouse or correctional institution--only by order of court.	All children
District of Columbia	Absolute prohibition unless 16 or older in a jail or other facility for the detention of adults if alleged delinquent who is menace to others in detention but separation is required. By order of court.	All children
Florida	Absolute prohibition unless charged with felony and then by court order with separation. Also, by court order if child is beyond control of detention staff. For dependent, abused, neglected juveniles and children in need of supervision, if no facilities available and runaway, or in need of care and treatment and lacks capacity to determine course of action, separation is required, with 24-hour time limitation. Section applies to placement in a jail or other facility intended or used for detention of adults.	All children
Georgia	Alleged delinquents may be held in adult facilities if no detention home available and by court order and if a place of security is necessary to prevent harm to self or others (no physical contact with adults permitted)--18-hour limitation. Absolute prohibition on placements in jail of alleged children in need of supervision and dependent, abused, neglected juveniles.	Alleged juveniles
Guam	Absolute prohibition unless 16 and above, court-ordered, if danger to self and others in detention facility. Separation is required.	All children
Hawaii	Absolute prohibition on placement in a police station, lockup, jail or prison, except for those who endanger themselves or others in detention facility--by court order, may be held in a jail or any other place of detention for adults.	All children

State	Provision	Jail Provision Applies To:
Idaho	No prohibition but separate sections are required with no sight or sound contact.	Delinquents and children in need of supervision.
Illinois	Absolute prohibition for those under 16; under 17, separation is required. Section applies to placement in a jail or place ordinarily used for the confinement of prisoners in a police station.	All children
Indiana	No prohibition but separation required.	Adult-crime delinquents
Iowa	Only alleged delinquents 14 and older who are dangerous to themselves or others, and if juvenile facility unavailable or behavior dangerous to others in facility may be held in a room in a facility intended or used for the detention of adults. Separation is required. Court order required after 12 hours.	Alleged delinquents
Kansas	No prohibition but separate sections are required on placements in a county or city jail.	Adult-crime delinquents
Kentucky	No child under 16 may be held in police station, lockup, jail, or prison unless danger to self or others in detention facility, by court order with separation required--may be placed in a jail or other place of detention for adults.	All children
Louisiana	If 15 or older, for safety of other children in detention with complete separation required and by court order, may be held in a police station or jail.	Alleged delinquents and those adjudicated delinquents allegedly in violation of probation for delinquent act
Maine	No prohibition but separate sections are required in a jail or other secure facility intended or used for the detention of adults. For dependent, abused, neglected juveniles and children in need of supervision, absolute prohibition on placement in any secure facility, adult or juvenile, unless no other appropriate non-secure placement, and then only in public sections of jail or other secure correctional facility and in no event for more than 6 hours.	An arrested juvenile or one beyond control in juvenile facility.

State	Provision	Jail Provision Applies To:
Maryland	Absolute prohibition.	Alleged delinquents
Massachusetts	Absolute prohibition unless pending notice of arrest to parent, may be held in a police station or town lockup, and unless between 14 and 17 and then separation required. Absolute prohibition for dependent, abused, neglected juveniles.	All children
Michigan	Absolute prohibition unless 15 or over and a menace to other children or who may not otherwise be safely detained, but by court order only. Separation.	All children
Minnesota	Absolute prohibition if under 14, children in need of supervision can be jailed for 24 hours only; only adult-type delinquents jailed if above 13 and juvenile detention not available. Separation required.	All children
Mississippi	Absolute prohibition.	All children
Missouri	No prohibition--detention allowed in a jail or other facility for the detention of adults if juvenile is menace to self and others. Separation required.	All children
Montana	No prohibition, youth may be detained in jail or other adult facility if shelter care facilities are not available or not secure enough; public protection. Physical and visual separation is required. Court ordered. Absolute prohibition for alleged dependent, abused, neglected juveniles.	Alleged delinquents and children in need of supervision
Nebraska	Absolute prohibition if under 14. If under 16, verbal, visual and physical separation is required.	All children taken into custody
Nevada	Absolute prohibition on placement in police station, lockup, jail or prison, unless no other provisions can be made and then separate sections are required. (In addition, official from detention home may direct transfer to jail of any child in detention; 24-hour time limitation unless by court order; if possible, separation is required.)	All children
New Hampshire	For alleged delinquents, court-ordered detention at a police station or jail; separation required; prior to arraignment. Following arraignment, no detention in jail or police station unless danger to self or others, by court order--separation	Alleged delinquents and dependent, abused, neglected juveniles

State	Provision	Jail Provision Applies To:
New Hampshire (continued)	required. Absolute prohibition for dependent, abused, neglected juveniles.	
New Jersey	Absolute prohibition on placement in any prison, jail or lockup or detention in any police station. If no other facility available, may be held in police station for a brief period. Separation required.	Delinquents and children in need of supervision.
New Mexico	Alleged delinquents may be detained but separation required. Alleged children in need of supervision or dependent, abused, neglected juveniles not to be detained in a jail or other adult facility.	Alleged juveniles
New York	Placement in a prison, jail, lockup or other adult facility allowed only with approval of state department, for those over 10.	All children
North Carolina	No prohibition on placement in holdover facility in a local jail but separate sections are required and by court order. Juvenile must not be able to converse with, see or be seen by adult population. Absolute prohibition on placement of dependent, abused, neglected juveniles in secure custody.	Alleged delinquents and children in need of supervision
North Dakota	Absolute prohibition for alleged dependent, neglected, abused juveniles; separation for alleged delinquents and children in need of supervision (if detention facility not available and public safety and protection require it). Section applies to jail or other adult facility.	Alleged juveniles
Ohio	For dependent, abused, neglected juveniles absolute prohibition unless by court order. For others, if detention home not available. Also, if over 15, court may order for public safety. Separation required.	All children
Oklahoma	Absolute prohibition on placement in police station, prison, jail or lockup for those under 16; except those over 12 may be placed in jail if court agrees but separation is required; and	All children

State	Provision	Jail Provision Applies To:
Oklahoma (continued)	those 15 and above may be placed in jail if no other facility available; separation required with a 72-hour time limitation unless extended by court order.	
Oregon	Absolute prohibition on placement in a police station, jail, prison, or other adult facility except (1) 3-hour detention in a police station for identification purposes; (2) for those 16 or older placement in a jail or other adult detention facility if danger to self or others in detention facility; (3) for those 14 or older placement in an adult detention facility when a juvenile detention facility is unavailable. Separation required.	All children
Pennsylvania	Absolute prohibition on placement in jail or adult facility.	All children
Puerto Rico	Absolute prohibition unless 16 and above ("over 16"), court ordered, if danger to self and others in detention facility. Separation.	All children
Rhode Island	Absolute prohibition on placement in a prison, jail or lockup.	Alleged delinquents and children in need of supervision.
South Carolina	Absolute prohibition or separation--statute is ambiguous. Note that a provision exists elsewhere in South Carolina law as to dependent, abused, neglected juveniles pursuant to the Child Protection Act of 1977 that dependent, abused, neglected juveniles are not to be taken to a detention facility for criminal or juvenile offenders.	All children
South Dakota	Absolute prohibition unless 15 and over.	All children
Tennessee	Absolute prohibition for dependent, abused, neglected juveniles, separation for others if detention facilities not available and public protection requires it--by court order. Section applies to placement in a jail or other adult facility.	Alleged juveniles

State	Provision	Jail Provision Applies To:
Texas	No prohibition but separate sections are required in a jail or lockup with adults.	Alleged juveniles
Trust Territories	No prohibition but separate sections are required.	Delinquents and children in need of supervision
Utah	Those 16 or over may be confined in jail if behavior dangerous to others in detention facility; otherwise absolutely prohibited.	All children
Vermont	Absolute prohibition on placement in a jail or other adult facility unless major offense (murder or treason) and then by court order (for public safety and protection).	All children
Virgin Islands	Absolute prohibition unless 16 and above, court-ordered if danger to self and others; separation required.	All children
Virginia	Only those 15 and above may be held in jails or other adult facilities if alleged and adjudicated delinquents or children in need of supervision and if threat to other juveniles in juvenile facilities but latter by judge order. Separation required.	Delinquents and children in need of supervision
Washington	Absolute prohibition for those 15 and under; separation required for those 16 and 17 years old.	All children
West Virginia	Absolute prohibition for children in need of supervision, separate sections required for delinquents over 14 and charged with violent crime; court ordered.	All children
Wisconsin	No prohibition but separate sections are required if no detention facilities available or there's a risk of harm to others in detention; court ordered.	All children
Wyoming	No prohibition but dependent, abused, neglected juveniles not to be locked up--just held for their protection; all others, separation required. For all, if no available juvenile facilities.	All children

table 6a

THE JAILING OF JUVENILES

State	Jailing of Juveniles?	Under What Circumstances?
Alabama	Yes	If no other detention facilities available--separate sections are required.
Alaska	Yes	Separate sections are required.
American Samoa	Yes	Separate sections are required.
Arizona	No	
Arkansas	Yes	Separate sections are required. For a 72-hour period only for children in need of supervision to determine whether or not they are children in need of supervision.
California	Yes	Separate sections are required. Under 18 if no other proper and adequate facilities and by court order. Absolute prohibition for children in need of supervision.
Colorado	Yes	For those 14 and older, if no other provision can be made; requires court order and separate sections. Separate sections only requirement for those 16-17 years old.
Connecticut	No	(Note that juvenile court jurisdiction for delinquents and children in need of supervision ends at 16.)
Delaware	Yes	By court order.
District of Columbia	Yes	If 16 or older, alleged delinquent who is menace to others in detention; separation is required and the jailing must be by court order.
Florida	Yes	If charged with felony and then by court order with separation. Also by court order if child is beyond control of detention staff. For others, if no facilities available and runaway, or in need of care and treatment and lacks capacity to determine course of action, separation is required, with 24-hour time limitation.
Georgia	Yes	Alleged delinquents may be held in adult facilities if no detention home available and by court order, and if a place of security is necessary to prevent harm to self or others (no physical contact with adults permitted)—18-hour limitation.

State	Jailing of Juveniles?	Under What Circumstances?
Guam	Yes	If 16 and above, court-ordered, if danger to self and others in detention facility. Separation is required. Cannot be jailed if under 16 years.
Hawaii	Yes	For those who endagner themselves or others in detention facility--by court order.
Idaho	Yes	Separate sections are required with no sight or sound contact.
Illinois	Yes	16-17 year olds only. Separation is required. Cannot be jailed if under 16 years.
Indiana	Yes	Separation is required. For adult-type offenders.
Iowa	Yes	Alleged delinquents 14 and older who are dangerous to themselves or others, and if juvenile facility unavailable or behavior dangerous to others in facility. Separation is required. Court order required after 12 hours. Cannot be jailed under 14 years.
Kansas	Yes	Separate sections required. For adult-type offenders.
Kentucky	Yes	If danger to self or others in detention facility, by court order with separation required.
Louisiana	Yes	If 15 or older, for safety of other children in detention with complete separation required and by court order. Cannot be jailed under 15 years.
Maine	Yes	Separate sections required for an arrested juvenile or one beyond control in juvenile facility. For dependent, abused, neglected juveniles and children in need of supervision absolute prohibition on placement in any secure facility unless no other appropriate nonsecure placement and then only in public sections of jail or other secure correctional facility and in no event for more than 6 hours.
Maryland	No	
Massachusetts	Yes	If pending notice of arrest to parent, may be held in a police station or town lockup, and if between 14 and 17 and then separation is required. Absolute prohibition for dependent, abused, neglected juveniles.

State	Jailing of Juveniles?	Under What Circumstances?
Michigan	Yes	If 15 or over and a menace to other children or who may not otherwise be safely detained, but by court order only and with separation. Cannot be jailed under 15 years.
Minnesota	Yes	Children in need of supervision can be jailed for 24 hours only; only adult-type delinquents jailed if above 13 and juvenile detention not available. Separation required. Cannot be jailed if under 14 years.
Mississippi	No	
Missouri	Yes	If juvenile is menace to self and others. Separation is required.
Montana	Yes	If shelter care facilities not available or not secure enough; for public protection. Physical and visual separation is required. By court order. Absolute prohibition for alleged dependent, abused, neglected juveniles.
Nebraska	Yes	If under 16, verbal, visual and physical separation is required. Cannot be jailed under 14 years.
Nevada	Yes	If no other provisions can be made and then separate sections are required. (In addition, official from detention home may direct transfer to jail of any child in detention with a 24-hour time limitation unless by court order; if possible, separation is required.)
New Hampshire	Yes	For alleged delinquents, court-ordered detention at a police station or jail; separation required; prior to arraignment. Following arraignment, no detention in jail or police station unless danger to self or others, by court order--separation required. Absolute prohibition for dependent, abused, neglected juveniles.
New Jersey	Yes	If no other provisions can be made and then separate sections are required but jailing permitted "for brief period" only.
New Mexico	Yes	If alleged delinquent--separation is required.

State	Jailing of Juveniles?	Under What Circumstances?
New York	Yes	With approval of state department for those over 10 years.
North Carolina	Yes	Separation sections are required and by court order. If runaway, 24-hour time limitation. No jailing of dependent, abused, neglected juveniles. After January 1, 1983, no juveniles in jail.
North Dakota	Yes	If detention facility not available and public safety and protection require it—for alleged delinquents and children in need of supervision; separation required. Absolute prohibition for alleged dependent, abused, neglected juveniles.
Ohio	Yes	If dependent, abused, neglected, juveniles, by court order. For others, if detention home not available. Also, if over 15, court may order for public safety. Separation is required.
Oklahoma	Yes	For delinquents only, those over 12 may be placed in jail if court agrees but separation is required; and those 15 and above may be placed in jail if no other facilities available; separation required with a 72-hour time limitation unless extended by court order.
Oregon	Yes	(1) 3-hour detention in a police station for identification purposes; (2) for those 16 or older placement in a jail or other adult detention facility if danger to self or others in detention facility; (3) for those 14 or older placement in an adult detention facility when a juvenile detention facility is unavailable. Separation is required.
Pennsylvania	No	
Puerto Rico	Yes	If 16 and above, court-ordered, if danger to self and others in detention facility. Separation is required. Cannot be jailed if under 16 years.
Rhode Island	No	
South Carolina	Yes	Separation required.
South Dakota	Yes	If 15 and over. Cannot be jailed if under 15 years.

State	Jailing of Juveniles?	Under What Circumstances?
Tennessee	Yes	Absolute prohibition for dependent, abused, neglected juveniles. For others, if detention facilities not available and public protection requires it--by court order and separation required.
Texas	Yes	Separate sections are required.
Trust Territories	Yes	Separate sections are required.
Utah	Yes	If 16 or over if behavior dangerous to others in detention facility. Cannot be jailed if under 16 years.
Vermont	Yes	If murder or treason is alleged offense and then by court order--for public safety and protection.
Virgin Islands	Yes	If 16 and above, court-ordered if danger to self and others; separation is required. Cannot be jailed if under 16 years.
Virginia	Yes	If 15 and above if alleged and adjudicated delinquents or children in need of supervision; if threat to other juveniles in juvenile facilities but latter by judge order. Separation is required. Cannot be jailed if under 15 years.
Washington	Yes	If 16 or above and delinquent--separate sections required. Cannot be jailed if under 16 years.
West Virginia	Yes	Absolute prohibition for children in need of supervision, separate sections required for delinquents over 14 and charged with violent crimes; court-ordered.
Wisconsin	Yes	If no detention facilities available or there is a risk of harm to others in detention; court-ordered. Separate sections required.
Wyoming	Yes	If no available juvenile facilities, dependent, abused, neglected juveniles not to be locked up just held for their protection; for all others, separation is required.

table 6B

CITATIONS TO JAIL AND DETENTION PROVISIONS

Alabama	Ala. Code tit. 12, §§12-15-61(b), 12-15-1(4),(8),(10),(11)
Alaska	Alaska Stat. §§47.10.130, 47.10.140, 47.10.142
Am. Samoa	A.S. Code tit. 33, §52
Arizona	Ariz. Rev. Stat. §§8-226, 8-223(B); Art. 22, §16 Constitution
Arkansas	Act 509 1977
California	Cal. Welf. & Inst. Code §§206, 207,208 (West)
Colorado	Colo. Rev. Stat. §19-2-103
Connecticut	Conn. Gen. Stat. Ann. §§46b-131,46b-129 (West)
Delaware	Del. Code tit. 10, §§933, 934; Family Court Rules, Rule 50
Dist. of Col.	D.C. Code Encycl. §16-2313 (West)
Florida	Fla. Stat. Ann. §§39.032,39.402 (West)
Georgia	Ga. Code Ann.Ch. 24A-14 but see specifically §§24A-1402, 24A-1403
Guam	Civ. Proc. Code, tit. V, ch. 1, §260
Hawaii	Haw. Rev. Stat. §§571-32; 571-2 (7)
Idaho	Idaho Code §16-1812A
Illinois	Ill. Ann. Stat. ch. 37, §§702-8, 703-5 (Smith-Hurd)
Indiana	Ind. Code Ann. §31-6-4-6.5 (Burns)
Iowa	Iowa Code Ann. §§232.21, 232.22, 232.95 (West)
Kansas	Kan. Stat. §§38-819, 38-840, 38-841

Kentucky	Ky. Rev. Stat. §§208.120, 208.192
Louisiana	La. Code Juv. Proc. arts. 34,41; see also arts. 25, 38, 40 (West)
Maine	Me. Rev. Stat. tit. 15, §§3203,3501
Maryland	Md. Cts. & Jud. Proc. Code Ann. §3-815
Massachusetts	Mass. Ann. Laws. ch. 119, §67 (Michie/Law Co-op)
Michigan	Mich. Stat. Ann. tit. 27, ch.XIIA §§598.14, 598.16 (Callaghan)
Minnesota	Minn. Stat. Ann. §260.173
Mississippi	Miss. Code Ann. §§43-21-309, 43-21-315
Missouri	Mo. Ann. Stat. §211.151 (Vernon)
Montana	Mont. Rev. Codes Ann. §10-1214
Nebraska	Neb. Rev. Stat. §§43-206.02, 43-212
Nevada	Nev. Rev. Stat. §62.170
New Hampshire	House Bill #831 (1979) Chapter 361 §§169-B:11, 15; D:10, 12
New Jersey	N.J. Stat. Ann. §§2A:4-56, 2A:4-57, 2A:4-62(b), 9:6-8.30
New Mexico	N.M. Stat. Ann. §32-1-25
New York	Family Law-New York; 1979-80 Yellow Book, Art. 7, §720 (Bender)
North Carolina	N.C. Gen. Stat. §§7A-571-578
North Dakota	N.D. Cent. Code §27-20-16
Ohio	Ohio Rev. Code Ann. §§2151.312, 2151.34 (Page)
Oklahoma	Okla. Stat. Ann. tit. 10, §§1104.2, 1107, 1116, 130.7, (West)

Oregon	Or. Rev. Stat. §419.575
Pennsylvania	Pa. Stat. Ann. tit. 42, §6327 (Purdon)
Puerto Rico	Laws of Puerto Rico Ann. tit. 34, Part XIII, §2007
Rhode Island	R.I. Gen. Laws §§14-1-20, 14-1-21, 14-1-26
South Carolina	S.C. Code §§14-21-590, 14-21-600, 20-10-80 (B)
South Dakota	S.D. Compiled Laws Ann. §§26-8-23.1, 26-8-29
Tennessee	Tenn. Code Ann. §37-216
Texas	Tex. Fam. Code Ann. tit. 3, §§51.12, 51.13, 53.02 (Vernon)
Trust Territories	15 TTC §1
Utah	Utah Code Ann. §78-3a-30
Vermont	Vt. Stat. Ann. tit. 33, §642
Virgin Islands	V.I. Code Ann. tit. 4, ch. 11, §2503
Virginia	Va. Code §§16.1-249, 16.1-251
Washington	Wash. Rev. Code Ann. §§13.04.115, 13.40.040,13.30.030,13.34.060
West Virginia	W.Va. Code §§49-5-8, 49-5-16
Wisconsin	Wis. Stat. Ann. §§48.207, 48.208, 48.209 (West)
Wyoming	Wyo. Stat. Ann. §14-6-207 (Michie)

[1] Note: May include citations to child welfare statutes or other provisions for placement of dependent, abused, and neglected juveniles.

table 7

"SECURE" AND "NONSECURE" — STATUTORY DISTINCTION

Statutory Description	State(s)
Detention facility is secure for those dangerous to themselves or others; shelter care is an alternative but is not defined	Oklahoma
A "secure facility" prohibits departure of the child; a "shelter care facility" is not locked unless to protect the child's health.	Indiana
Shelter care is in physically unrestricted facilities.	Maine, North Dakota, Pennsylvania, Tennessee, Virginia
Nonsecure shelter is for dependents; secure shelter is for runaways and others who need it.	Florida
Detention means secure custody in physically restricting facilities for the juvenile's own or the community's protection.	Idaho
"Secure" and "nonsecure" detention facilities	New York
"Secure detention facility" is a physically secure setting which is entirely separated from sight and sound from all other portions of the jail containing adult prisoners.	Kentucky
"Detention" is temporary care in secure custody; shelter care is non-penal care.	Alabama

table 8

SEGREGATION OF GROUPS OF CHILDREN PRIOR TO DISPOSITION

State	Segregation Provision
Arizona	Child dangerous to other children to be segregated
North Dakota, Arkansas	Dependent, abused, neglected juveniles from children in need of supervision and delinquents
District of Columbia	Dependent, abused, neglected juveniles from children in need of supervision and delinquents; delinquents and children in need of supervision from committed delinquents
Delaware, Wisconsin	Abused and neglected from delinquents
Arkansas, Kentucky, West Virginia	Children in need of supervision from delinquents
California	Dependent, abused, neglected juveniles from children in need of supervision and delinquents and children in need of supervision and delinquents
Louisiana, Washington	No provision but only delinquents can go to detention facility; others go to shelter care.
Utah	No provision, but those not requiring physical restriction to be placed in shelter care; those over 15 and danger to others in detention, jail.
New Mexico	Dependent, abused, neglected juveniles and children in need of supervision from delinquents; alleged delinquents from adjudicated delinquents.
Oregon	If runaway, delinquent or dangerous to self and others, detention otherwise, shelter care.
Indiana	Dependent, abused, neglected juveniles and children in need of supervision from delinquents
Maryland	Alleged delinquents from adjudicated delinquents
Tennessee	Alleged dependent, abused, neglected juveniles from alleged delinquents
Pennsylvania	Although dependent, abused, neglected juveniles and children in need of supervision not in detention, no prohibition on other mixing.
Nevada	Whenever possible, neglected children and children in need of supervision to be kept apart from alleged delinquents.
Ohio	Alleged dependent, abused, neglected juveniles from alleged delinquents unless by court order.
New Hampshire	Dependent, abused, neglected juveniles from delinquents
South Carolina	Dependent, abused, neglected juveniles not in a facility for the detention of criminal or juvenile offenders
Florida	Dependent, abused, neglected juveniles and children in need of supervision from delinquents.

table 9

SEGREGATION OF GROUPS OF CHILDREN-HOLDING FACILITIES

State	Provision
District of Columbia, North Dakota, Virginia	Neglected child not to be in detention home for allegedly delinquent or children in need of supervision
California, Indiana	Facilities may be same but separation required
Kentucky	Same as (4) pre-disposition; separate institutions after disposition
Oklahoma	No segregation provision but children in need of supervision not to be placed in secure detention facility unless runaways
Arkansas, Louisiana, Minnesota, New Mexico, Pennsylvania, Washington,	Delinquents-detention facility; others-shelter care
Hawaii, Utah, Vermont	Shelter care for those not requiring physical restriction; detention for those requiring it; jail for those in detention dangerous to others, or have committed major offense
Oregon	Jail and detention for delinquents, runaways, those dangerous to self and others; otherwise shelter care; secure juvenile training school for delinquents only post-disposition
Georgia, Montana, Tennessee, Wyoming	Detention facilities for children in need of supervision and delinquents, not dependent, abused, neglected juveniles
New Hampshire	Children in need of supervision not to be placed in delinquent facilities
Kansas	Delinquents (felonies) and miscreants (adult misdemeanors) to detention facility; others to shelter care

7 Time And Petition Requirements

This section covers the time and petition requirements from detention of a juvenile until the disposition hearing. The following areas are discussed: (1) If a detention hearing is provided for, within what time period following detention must the hearing be held. How long must juveniles be held in detention or shelter care without court review or a hearing to determine whether they should be held in custody pending adjudication or whether they should be in custody at all. This is a critical period for juveniles-not only may the detention center be unhealthy in many respects but also they are in an alien environment away from family and friends and all that they are used to.

(2) Whether a formal petition must be filed stating the specific facts which bring the juvenile within the court's jurisdiction and if there is a requirement, within what time period must the petition be filed.

The following examples illustrate how both areas (1) and (2) are provided for in the statutes:

South Dakota
No child shall be held in detention or shelter care longer than 48 hours...unless a petition has been filed, or the court so orders following a hearing to determine further detention or release.[48]

Maryland
If the child is not released, the intake officer shall immediately file a petition to authorize continued detention or shelter care. A hearing on the petition shall be held not later than the next court day, unless extended by the court upon good cause shown...Detention and shelter care shall not be ordered for a period of more than 30 days unless an adjudicatory or waiver hearing is held.[49]

The final area to be discussed is:

(3) If a juvenile is held in detention following the detention hearing, whether there are any time limitations--how long may a juvenile be held in custody before an adjudicatory hearing is held and how long after the adjudicatory hearing and before the disposition hearing may s/he be held. The main point is for what possible time period may a juvenile be statutorily held in detention or shelter care before her/his case is decided--is it a matter of weeks, months, or possibly, years?

A. Time Period Within Which the Detention Hearing Must Be Held.

National standards provide that:

> Unless a juvenile who has been taken into custody has been released, a judicial hearing to review the necessity for his continued detention should be held within 48 hours from the time he was taken into custody.[50]

Although administrative handling of the detention decision may appear to be the more acceptable because more efficient alternative, due process requirements and the need for prompt judicial review make judicial handling a necessity.[51]

Of course, the definitions of what is "prompt" judicial review is the issue of concern in this area. The commentary to Standard 12.11 states a preference that a detention hearing be held on the same day as a juvenile is taken into custody. However, Standard 12.11 itself requires a hearing within 48 hours from the time the juvenile is taken into custody, the drafters having recognized the need for time to schedule the hearing and time to give notice to parents and various officials.[52]

Table 10 indicates, for those states which specify a time limitation, what that limitation is.

Of those states not listed in Table 10, which statutorily (note that this may be provided for by rules of court as in New Jersey) require a hearing, Minnesota sets the time at 36 hours excluding nonjudicial days while Illinois requires 36 hours for delinquents and 48 hours for others excluding nonjudicial days. Tennessee law requires an informal hearing in three days and if one is not held, a hearing on the petition must be held in seven days. North Dakota sets 96 hours as its time limit while in North Carolina, it's five days for delinquents and children in need of supervision (a hearing on the merits must be held for dependent, abused, or neglected juveniles within five days). In Mississippi, a hearing must be held if emergency custody is involved within ten days of the filing of the petition. In Connecticut, for dependent, abused, or neglected juveniles in custody a hearing on the petition must be held within ten days otherwise there is no provision. Finally, in Massachusetts, the hearing must be held within 15 days for children in need of supervision otherwise there is no provision.

B. Petition Requirement, Contents, Time for Filing.

A petition in juvenile court proceedings serves three purposes: (1) it gives advance notice to the juvenile and his or her parent(s)(constitutionally required where delinquency is involved--In re Gault); (2) it provides a record of the allegations; (3) it should enable the court to conduct an orderly and directed factfinding hearing.[53]

The petition is thus significant in the juvenile court proceedings, and is in fact statutorily provided for in most states. The filing of a formal petition or "information" or complaint which states the specific facts which bring the juvenile within the jurisdiction of the juvenile court is generally required for the continued detention of juveniles.

Of course, the important objectives of the petition, especially the notice aspect, require some time limitation within which the petition should be filed following the detention of a juvenile. Table 11 indicates the time limitations for those states which statutorily provide one.

The following variations reveal the possible diversity in this area: In Illinois and Oregon, a petition must be filed by the time of the detention or shelter care hearing. In Arkansas, the time is 72 hours for dependent, abused, or neglected juveniles, 24 hours of detention hearing or 96 hours of arrest if others, whichever time comes first. In Florida, a complaint must be filed within 24 hours excluding non-judicial days, and a petition must be filed within 45 days of the time the complaint is referred to the intake office. In Maine, a petition must be filed within 10 days from the date of detention following court-ordered detention. In North Carolina, a juvenile taken into temporary custody cannot be held for more than 12 hours unless a petition has been filed and an order for secure or nonsecure custody has been entered by a judge. Further, a juvenile is not to be held under a custody order for more that 5 days without a detention hearing. As a final example, in Nevada if the juvenile is a delinquent or in need of supervision, the petition must be filed ten days from the date the complaint was referred to the probation officer. Note once again that petition requirements may be set out by Court Rules as in Arizona where a petition alleging a juvenile's delinquent conduct must be filed within 24 hours to hold the juvenile in detention.[54]

C. Time Between Detention, Adjudicatory, and Disposition Hearings

The final area of concern in this section is the length of time it takes for a juvenile to move through the system. That is, what if any are the time limitations between the Detention, Adjudicatory, and Disposition Hearings.

National standards recognize the need for specific, detailed legislation in this area to guarantee a juvenile the right to a speedy trial. Following is an example of what form proposed legislation could take:

> 7.10 Speedy trial.
> To curtail detention and reduce the risks of release and control, all juvenile offense cases should be governed by the following timetable:
> A. Each case should proceed to trial:
> 1. within fifteen days of arrest or the filing of charges, whichever occurs first, if the accused juvenile has been held in detention by order of a court for more than twenty-four hours; or
> 2. within thirty days in all other cases.
> B. In any case in which the juvenile is convicted of a criminal offense, a disposition should be carried out:
> 1. within fifteen days of conviction if the juvenile is held in detention by order of a court following conviction; or
> 2. within thirty days of conviction in all other cases.

C. The limits stated in A. and B. may be extended not more than sixty days if the juvenile is released, and not more than thirty days if the juvenile is in detention, when:
1. the prosecution certifies that a witness or other evidence necessary to the state's case will not be available, despite the prosecution's best efforts, during the original time limits;
2. any proceeding concerning waiver of the juvenile court's jurisdiction is pending;
3. a motion for change of venue made by either the prosecutor or the juvenile is pending; or
4. a request for extradition is pending.

D. The limits stated in A. and B. may also be extended for specified periods authorized by the court when:
1. the juvenile is a fugitive from court proceedings; or
2. deferred adjudication or disposition for a specific period has been agreed to in writing by the juvenile and his or her attorney.

E. The limits in A. and B. may be phased in during a period not to exceed twelve months from the effective date of adoption of these standards, in order to enable a court to obtain the necessary resources to adjudicate cases on the merits. During such period, the maximum limit for detention cases should be thirty days from arrest to trial and thirty days from trial to final disposition.

F. In any case in which trial or disposition fails to meet these standards, the charges should be dismissed with prejudice.[55]

Unfortunately, very little has been done in this area by the states; only 22 states statutorily provide time limitations between the Detention and Adjudicatory hearings (see Table 12) and only 12 states clearly provide for a time limitation between the Adjudicatory and Disposition hearings (although the provision may not apply to all groups of children). In the latter area, in Florida, Texas, and Washington, the time limit is one to 15 days with a possible provision for extensions. In Vermont, Kansas, Louisiana, Pennsylvania, and New Hampshire the time limit is within 16-30 days. In Indiana and Ohio it is three to six months, and in Wisconsin it is ten days for a child in secure custody and 30 days otherwise.

In Mississippi, an adjudicatory hearing must be held within 21 days after the child is first detained by the youth court and the disposition hearing is to be held within 14 days after the adjudicatory hearing.

table 10

TIME PERIOD WITHIN WHICH DETENTION HEARING HELD

State	24 HOURS[1,2,3]	48 HOURS [1] (Excluding nonjudicial days)	72 HOURS[1,2,3]
Alabama			●
Alaska		●	
Arkansas			●
California	●		
Colorado		●	
District of Columbia	●		
Florida	●[4]	●	
Georgia			●
Guam		●	
Hawaii		●	
Idaho	●	●[5]	
Indiana		●	
Iowa		●	
Kansas		●	
Kentucky			●
Louisiana			●
Maine		●	
Maryland	●		
Mississippi	●		
Missouri	●		
Nebraska		●	
Nevada	●		
New Hampshire	●		
New Mexico	●		
New York			●
Ohio			●
Oklahoma	●		
Oregon		●	
Pennsylvania			●
Puerto Rico		●	
Rhode Island	●		
South Carolina		●	
Tennessee			●
Texas		●	

State	24 HOURS [1,2,3]	48 HOURS[1] (Excluding nonjudicial days)	72 HOURS[1,2,3]
Utah		●	
Vermont		●	
Virginia			●
Washington			●
West Virginia	●		
Wisconsin	●		
Wyoming			●

[1]Time period may begin when the court receives notification of detention, when the petition is filed, when the juvenile is taken into custody or enters the juvenile facility or otherwise.

[2]Time may be total time allowed or may exclude non-judicial days.

[3]May apply only to specified groups such as children in need of supervision and delinquents.

[4]Applies to dependent, abused, neglected juveniles and children in need of supervision.

[5]Applies to dependent, abused, neglected juveniles.

table 11

TIME PERIOD WITHIN WHICH PETITION FILED

State	0-24 HOURS	24-48 HOURS	48 HOURS-WEEK
Alabama			
Alaska			●
California		●	
Colorado		●	
District of Columbia	●	●	
Georgia			
Hawaii			●
Idaho	●	●	
Indiana			
Iowa			●
Louisiana		●	
		●	
Maryland	●		
Minnesota			
Mississippi		●	
Montana			
Nebraska			●
New Mexico		●	●
North Carolina		●	
Oklahoma	●		
Pennsylvania			
South Dakota	●		●
Tennessee		●	
Washington			
Wisconsin			●
	●		●

Note: the various juvenile codes should be consulted to check at what point in the proceedings this time period begins to run.

table 12

TIME BETWEEN DETENTION AND ADJUDICATORY HEARINGS

State(s)	Time Period
California, Kansas, Montana, North Dakota, Indiana, New Mexico, Pennsylvania, Vermont, and Ohio	10-20 days (may be from date petition is filed)
Maryland and West Virginia	30 days
Georgia	10 days after filing petition if in detention; 60 days otherwise
Iowa	7 days
Illinois	10 days for delinquents and children in need of supervision; 30 days for dependent, abused, neglected juveniles
Louisiana	Within 5 days of filing petition adult-type offenders or children in need of supervision; all others, within 15 days for appearance to answer petition; within 30 days if in custody, of appearance to answer petition, adjudication hearing
Oregon	72 hours total detention if runaway or child dangerous to self or others; no time limit on delinquents; 61 days from date of petition if not in detention
Florida	21 days; also within 90 days of taken into custody or date petition filed, earliest of two
New Hampshire	Within 21 days if detained--delinquents. If children in need of supervision, within 21 days of "initial appearance"
New York	After filing of petition, six days maximum detention exclusive of non-judicial days. Fact-finding hearing within three days if in detention. Within 14 days if felony.
Massachusetts	45-day limit on detention
Rhode Island	30 day maximum detention (with 30 day possible extension)
South Dakota	After filing of petition, three months maximum for all children continuation of case pending final disposition

8 Disposition

This area of the juvenile law receives the least attention in the literature, although it is of primary importance to the juvenile who may face years of institutionalization or various foster homes, or whatever the judge in his or her discretion decides. The following material is an overview of what the codes provide for in this area--it is not as thorough an analysis as the above material because of the lack of literature on the subject plus the fact that the primary focus of this report is on the pre-disposition stages of the juvenile court proceedings. It is hoped that the information provided here can lay the groundwork for future interest and research in the disposition stage.

A. Dispositional Alternatives

This stage of the juvenile court proceedings receives little attention in the juvenile codes. Usually, the disposition alternatives available to the juvenile court judge are listed in general language in one section of law (or three, one for each major category of children) with varying degrees of specificity. Disposition alternatives for dependent, abused, or neglected juveniles (depending on the state's definition this may include some children in need of supervision and delinquents) include (1) remain with parents, guardian (with or without probation or protective supervision); (2) supervision or legal custody to a government department, local public child-placing agency, public or private agency, organization or facility, relative or other individual; (3) commitment or placement for medical, psychiatric, or other treatment (Almost all states provide for physical and/or mental care of juveniles, ranging from examination, treatment, study, and report to placement for a limited time or otherwise. Not as many, but a majority of states also provide for commitment to a mental institution, commitment to the custody of a state mental health department, authority to direct initiation of commitment proceedings, or authority to place the juvenile in a public hospital, institution, or agency.); (4) supervised independent living, public work, excused from school; and (5) placement in home of relative, foster home, group home, residential treatment center.

Disposition alternatives for children in need of supervision and delinquents include the above plus (1) fine, restitution, safety boat course, suspension of license; (2) commitment to the Department of Corrections; and (3) placement in county jail, a detention facility, training school, or industrial school.

1. Placement in or Transfer to Adult Penal Facilities

Although placement in a state adult penal institution is not specifically listed as a disposition alternative in most states it is unclear whether such placement is a possibility without an absolute prohibition on such placements. Alabama, Hawaii, Maryland, Montana, New Mexico, North Dakota, Oregon, Pennsylvania, Tennessee, Texas and Vermont are states that prohibit the placement of juveniles or transfer of juveniles to adult penal facilities.

California prohibits the placement of juveniles under 16 in adult facilities. Table 6 (Jail Provisions) should be consulted because some of the state jail provisions apply to alleged and adjudicated juveniles. An additional possibility is that litigation exists in this area, as for example in Alaska. In In re E.M.D., Alaska, 490 F.2d 658 (1971), the court held that the Superior Court exceeded its authority in ordering the institutionalization of a child in need of supervision. Since the child was not found to be a delinquent minor the court found no legal basis for her incarceration.

In Arizona, Delaware, Wisconsin, and Illinois, juveniles may be committed to the Department of Corrections although the code is unclear whether they are placed in adult facilities. Although according to one Illinois source, the Code of Corrections provides that juveniles cannot be placed in adult facilities. And, a minor if committed to the Department of Corrections is committed to the Juvenile Division of the Department. In Arizona, Arizona Constitution, Art. 22, Section 16 provides that minors under the age of 18 may not be confined in the same section of a jail or prison where adult prisoners are confined. And Atty. Gen. Op. No. 72-2 interpreted this section to prohibit a plan where juvenile and adult prisoners would be housed in separate facilities at night, but would commingle during the day in classrooms, shops, dining rooms and visitor's areas. There may be minimum age restrictions also; for example, in Wisconsin, the juvenile must be over 11 years old and delinquent before legal custody can be given to the Department of Corrections for placement in a secure correctional facility.

In Idaho, Kansas, Maine, Wyoming, Colorado, Virginia, and New Hampshire, placement in a jail or other adult facility is an alternative. There may be limitations, for example, in Colorado, the juvenile must be delinquent and 18 or older to be placed in the county jail for not more than 180 days. In Virginia, the juvenile must be 15 or older and delinquent to be placed for a maximum of 12 months in jail. In New Hampshire, the juvenile must pass the age of 17 to be placed in an adult facility. In Maine, the juvenile must have committed a juvenile crime. The court may then commit the juvenile to the Maine Youth Center and order that the sentence be suspended except for a period of detention which must not exceed 30 days, which may be served intermittently as the court may order and which must be ordered served in a county jail designated by the Department of Mental Health and Corrections as a place for the secure detention of juveniles, or in a nonsecure group care home or halfway house.

As to transfer to adult facilities, most state juvenile codes contain no provision thus it is unclear what the transfer process is if it

exists at all. In California, transfer to adult facilities is allowed if the juvenile is 16 or older. In Wisconsin, transfer to the Department of Corrections is allowed following a hearing. In West Virginia, transfer is allowed if the juvenile is over 17.

Examples of prohibitions on the commitment and/or transfer of juveniles to adult facilities include:

District of Columbia

> No child who is found to be delinquent, in need of supervision, or neglected shall be committed to a penal or correctional institution for adult offenders.[56]

Georgia

> A child shall not be committed to a penal institution or other facility used primarily for the execution of sentences of persons convicted of a crime.[57]

Maryland

> A child may not be detained at, or committed or transferred to a penal institution or other facility used primarily for the confinement of adults charged with or convicted of a crime....[58]

North Dakota

> A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of a crime.[59]

B. Difference in Disposition Between the Major Groups of Juveniles

As mentioned above, the juvenile codes generally do not provide much guidance to the juvenile court judge at the disposition stage. Although the disposition alternatives for the major categories of juveniles may be listed separately, there is little recognizeable difference in the alternatives. In fact, the juvenile codes give the researcher very little idea as to exactly what is likely to happen to juveniles when they leave the system. The judge in his or her discretion apparently makes the decision as to the future of the juvenile involved.

As indicated, most states provide minimal if any differentiation in disposition alternatives between dependent, abused, or neglected juveniles and children in need of supervision. In seven states (Connecticut, Georgia, Minnesota, Nebraska, North Carolina, South Dakota, and Wyoming), there is significant difference while in five other states (Kansas, North Dakota, Tennessee, Utah, and West Virginia) commitment to a state correctional program or rehabilitative facility or similar institutions is not an alternative for dependent, abused, or neglected juveniles whereas it is for children in need of supervision.

Most states also provide minimal if any differentiation between disposition alternatives between children in need of supervision and delinquents. However, in seventeen states, there is significant differentiation.* This means, for example, that children in need of supervision may not be placed in a training school, a county jail, fined, placed in a work program or placed in a detention facility--these disposition alternatives being available for delinquents only. In Arkansas, California, New Jersey, New York, and Oregon, physical confinement is not an alternative for children in need of supervision

although it is for delinquents. Further examples of differentiation include: in North Carolina, Tennessee (for most children in need of supervision), and Texas where commitment to the Youth Council or Department of Corrections is available for delinquents, but not for children in need of supervision, and Illinois where probation and the Department of Corrections are alternatives for delinquents but not for children in need of supervision.

*Arizona, Colorado, Delaware, Hawaii, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Carolina, Ohio, Pennsylvania, Virginia, West Virginia.

C. Provision for Segregation of Major Groups

The majority of states provide for some type of post-disposition segregation between the major groups of children, with the majority specifying that dependent, abused, or neglected juveniles and/or children in need of supervision are not to be committed to specified children in need of supervision or delinquent institutions, or other delinquent-only alternatives. For example, Maryland's provision states: "A child who is not delinquent may not be committed or transferred to a facility used for the confinement of delinquent children."60 In a much stronger provision, seven states (Alabama, California, District of Columbia, Maryland, New Hampshire, New Mexico, Oregon (for juvenile training school only)) specify that dependent, abused, or neglected juveniles and children in need of supervision are to be totally segregated from delinquents. Other examples include the Arkansas code, which provides that children in need of supervision are to be segregated from delinquents, and the Kentucky code which provides that dependent, abused, or neglected juveniles and children in need of supervision and all children under ten are to be segregated from delinquents.

D. Time Limits on Institutionalization

In most states, institutionalization continues for an indefinite time without periodic review in most of those states. In only 17 states,* institutionalization is not for an indefinite time, and there may be periodic review. In some of these states the time period is specified, or the orders are limited from 6 months to 2 years with possible extensions and revisions not to exceed a maximum number of years. Of the remaining states, in Kentucky, although most juveniles are committed for an indefinite period of time, there are some time restrictions on the institutionalization of serious offenders and others over 16 in certain circumstances. The majority of juveniles if committed are committed for an indefinite period of time. In West Virginia, the time is specified for more restrictive alternatives and in Maryland, there is a maximum time of three years for delinquents and children in need of supervision. In Massachusetts, the maximum time is 6 months for certain children in need of supervision, otherwise it is indefinite. In Hawaii, institutionalization is for an indefinite time for delinquents otherwise it is not to exceed a maximum number of years. In North Carolina, the court is allowed limited discretion for imposing determinate sentences and in Nevada, institutionalization is indefinite with periodic review for all except delinquents.

*Alaska, California, Connecticut, District of Columbia, Georgia, Iowa, Louisiana, Minnesota, Montana, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Trust Territories, Washington, Wisconsin.

1. Minimum/Maximum Sentences for Particular Offenses

In 17 states, juveniles are treated more as adults (although not always in an identical manner; for example, there may be a special system for setting standard juvenile sentences as in Washington) in that there are minimum or maximum sentences or a variation thereof for particular offenses.* Eleven of these states provide that the sentence is to be no longer than the maximum adult sentence for the same offenses.** In New Jersey, this applies to homicide only. In Delaware, Kentucky, and New York, there are minimum and maximum sentences for specific felonies and misdemeanors or specific offenses. In Kentucky, however, the law applies only to children sixteen or older in certain circumstances and refers to certain dispositions available to the court in its discretion. In Virginia, the sentences are the same as for adults if the court decides to treat the juvenile as an adult otherwise the provision does not apply. The latter is not a bind-over provision but a juvenile court dispositional alternative.

*American Samoa, California, Delaware, Florida, Iowa, Kentucky, Louisiana, Montana, New Hampshire, New Jersey, New York, Oregon Pennsylvania, Trust Territories, Virginia, Washington, West Virginia.

**American Samoa, California, Florida, Iowa, Louisiana, Montana, New Hampshire, Oregon, Pennsylvania, Trust Territories, West Virginia.

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9 The Juvenile Justice and Delinquency Prevention Act

A major objective of this project was to review the juvenile codes of the 56 states and territories to provide a legal update in the areas of specific concern to the Juvenile Justice and Delinquency Prevention Act. As discussed in the introductory portion of this publication, however, the difference in the Act's definitions of juveniles within the juvenile justice system, as interpreted by its administering agency, the Office of Juvenile Justice and Delinquency Prevention, and the definitions contained in state juvenile codes required separate treatment of on the one hand, presenting an accurate view of state law and on the other, as is done in this part, assessing whether state law adheres to the requirements of the Act. Thus, the following materials will indicate (1) whether status offenders and nonoffenders can be placed in juvenile detention facilities and (2) if juveniles are placed in adult jails, whether they are kept separate from adult offenders. The following definitions were used in this analysis: "Status offender"--a juvenile who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult; "Nonoffender"--a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile; "Criminal-type offender"--a juvenile who has been charged with or adjudicated for conduct which would, under the law of the jursidiction in which the offense was committed, be a crime if committed by an adult.

As to issue (1) whether status offenders and nonoffenders can be placed in juvenile detention facilities, few states adhere to the requirements of the Act. Of those states providing for the deinstitutionalization of their children in need of supervision* (usually applies at the predisposition stage), only Delaware, Illinois, Iowa, Maryland, New Hampshire, New Jersey, New Mexico, and Washington provide complete deinstitutionalization. The delinquent category in the latter states does not include any status offenders (criminal-type offenders only) as it may in Alabama, Louisiana, Maine, and Pennsylvania because the delinquent category in each of these states does not exclude the possibility of inclusion of some status offenses.

*Alabama, Delaware, Illinois, Iowa, Louisiana, Maine, Maryland, New Hampshire, New Jersey, New Mexico, Pennsylvania, Washington.

As to the deinstitutionalization of nonoffenders, the juvenile codes are generally unclear whether nonoffenders can be placed in juvenile detention facilities thus it was assumed that such a placement was possible. The following states, however, do not allow the holding of nonoffenders in juvenile detention facilities: Alabama, Arkansas, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, Wisconsin, and Wyoming.

Finally, as to issue (2) whether juveniles placed in adult jails are kept separate from adult offenders, all state juvenile codes except those of Delaware, Hawaii, New York, Utah, and Vermont contain provision for separation.

Conclusion

As this report indicates, there are many areas of potential reform within the juvenile justice system. Following is a summary of suggested actions to improve the system through changes in state legislation in the areas of venue, waiver, custody, detention, and disposition:

(1) Provide clearly for intra-state transfer of a juvenile to the court of his or her home county;

(2) Allow waiver--after a hearing before the juvenile court--only for those juveniles who have committed violent crimes and who have little chance of rehabilitation in the juvenile justice system. Set forth specific criteria on which the decision to waive can be based. Once a juvenile is waived, provide protections so that he or she is not placed in facilities with adults.

(3) Allow police handling of juveniles only where an adult-offense is alleged; otherwise juveniles should be handled by a social service agency;

(4) Provide that a court intake officer only make the decision whether to detain a juvenile. The decision should be subject to review of the juvenile court. The expressed policy however should be in favor of release. If detention or shelter care is chosen, the decision should be based on specific statutory criteria.

(5) Absolutely prohibit the jailing of children. Provide appropriate alternatives depending on the individual juvenile involved.

(6) Provide for the deinstitutionalization of status offenders, nonoffenders, and those criminal-type offenders for whom detention is unnecessary.

(7) Provide time limitations on the juvenile court process: on predisposition detention, shelter care, on the time between the various hearings--set a limit on the total time involved.

(8) Provide more specifically for the disposition of juveniles including specific criteria as to the disposition alternatives to be chosen, the deinstitutionalization of status offenders, nonoffenders, and those criminal-type offenders not in need of institutionalization. There should be a policy in favor of home community treatment and for a specified period of time subject to periodic review. Placement in or transfer to adult facilities should be absolutely prohibited.

There are, of course, many other ways to improve the juvenile justice system. The above represent some of the more important areas of change. Primary objectives are to get juveniles out of jails and detention centers and to treat juveniles as individuals--to understand them and to provide rehabilitative alternatives. Society

will gain more from a rehabilitated juvenile than one who has been shifted throughout the system from foster home to foster home, detention center to detention center and eventually, continuing the cycle, from adult prison to adult prison. If we can break the cycle at the juvenile stage, the future will be that much more stable and rewarding for all of us.

Appendix A

Interstate Compact on Juveniles (References)

1. Alabama: Ala. Code title 44, Section 44-2-1
2. Alaska: Alaska Stat. Section 47.15.010
3. American Samoa: None
4. Arizona: Ariz. Rev. Stat. Ann. Section 8-361 (West)
5. Arkansas: Ark. Stat. Ann. Section 45-301
6. California: Cal. Welf. & Inst. Code Section 1300 (West)
7. Colorado: Colo. Rev. Stat. Section 24-60-701
8. Connecticut: Conn. Gen. Stat. Ann. Section 17-75 (West)
9. Delaware: Del. Code Ann. title 31, Section 5201 (Michie)
10. District of Columbia: D.C. Code Encycl. Section 32-1101 (West)
11. Florida: Fla. Stat. Ann. Section 39.51 (West)
12. Georgia: Ga. Code Ann. Section 99-3401
13. Guam:Guam Codes Ann. Ch. 90, Art. 3, Section 90.80
14. Hawaii: Haw. Rev. Stat. Section 582-1
15. Idaho: Idaho Code Section 16-1903
16. Illinois: Ill. Ann. Stat. ch. 23, Section 2591 (Smith-Hurd)
17. Indiana: Ind. Code Ann. Section 31-6-10-1 (Burns)
18. Iowa: Iowa Code Ann. Section 232.139 (West)
19. Kansas: Kan. Stat. Ann. Section 38-1001
20. Kentucky: Ky. Rev. Stat. Section 208.600
21. Louisiana: La. Rev. Stat. Ann. Section 46:1451 (West)
22. Maine: Me. Rev. Stat. Ann. title 34, Section 181
23. Maryland: Md. Ann. Code art. 41, Section 327
24. Massachusetts: Mass. Ann. Laws ch. 119 App. Section 1-1 (Law.Co-op)
25. Michigan: Mich. Comp. Laws Ann. Section 3.701
26. Minnesota: Minn. Stat. Ann. Section 260.51 (West)
27. Mississippi: Miss. Code Ann. Section 43-25-1
28. Missouri: Mo. Ann. Stat. Section 210-570 (Vernon)
29. Montana: Mont. Rev. Codes Ann. Section 10-1001
30. Nebraska: Neb. Rev. Stat. Section 43-1002
31. Nevada: Nev. Rev. Stat. Section 214.010
32. New Hampshire: N.H. Rev. Stat. Ann. Section 169-A:1
33. New Jersey: N.J. Stat. Ann. Section 9:23-1 (West)
34. New Mexico: N.M. Stat. Ann. Section 13-16-1 (Michie)
35. New York: N.Y. Uncon. Laws Law (Consol.) v.41, ch.74
36. North Carolina: N.C. Gen Stat. Section 7A-684

37. North Dakota: N.D. Cent. Code Section 27-22-01
38. Ohio: Ohio Rev. Code Ann. Section 2151.56 (Page)
39. Oklahoma: Okla. Stat. Ann. title 10, Section 531 (West)
40. Oregon: Or. Rev. Stat. Ch. 417, Section 417.010
41. Pennsylvania: Pa. Stat. Ann. title 62, Section 731 (Purdon)
42. Puerto Rico: None
43. Rhode Island: R.I. Gen. Laws Section 14-6-1
44. South Carolina: S.C. Code Section 24-17-10
45. South Dakota: S.D. Compiled Laws Ann. Section 26-12-1
46. Tennessee: Tenn. Code Ann. Section 37-801
47. Texas: Tex. Fam. Code Ann. title 2, Section 25.01 (Vernon)
48. Trust Territories: None
49. Utah: Utah Code Ann. Section 55-12-1
50. Vermont: Vt. Stat. Ann. title 33, Section 551
51. Virgin Islands: None
52. Virginia: Va. Code Section 16.1-323
53. Washington: Wash. Rev. Code Section 13.24.010
54. West Virginia: W. Va. Code Section 49-8-1
55. Wisconsin: Wisc. Stat. Ann. Section 48.991 (West)
56. Wyoming: Wyo. Stat. Ann. Section 14-6-101 (Michie)

Appendix B

MONITORING PROVISIONS*

(Inspection of Facilities Holding Juveniles)
and Related Provisions

STATE	STATUTORY REFERENCE	STANDARDS PROVIDED**	ENFORCEMENT PROVIDED***	REGULATORY BODY****
Alabama	ALA code title 44, §44-1-27	X	X	G
Alaska	AK Stat. §§47.10.140(g), .240 .250	X		G
Arizona	Ariz. Rev. Stat. §§8-226-8-227			G
Arkansas	Ark. Stat. ANN. §45-446			J
California	CA Penal Code §§6030-6031.4 CA Welf. & Inst. Code §§209, 210, 210.1	X	X	B
Colorado	CO Rev. Stat. §§19-8-110, 17-26-121 & 17-26-126			G
Connecticut	CT Gen. State ANN. §§17-48-51	X	X	G
Delaware	Del. Code Ann. Title 31 §§341-344	X	X	G
Florida	FL Stat. Ann. §§959.23 & .24	X	X	G
Georgia	GA Code §99-214	X	X	G
Idaho	Idaho Code §§16-1812A, 16-1832, -1821, -1842	X	X	G
Indiana	IND Code Ann. §§11-5-3-1; 11-5-3-2; 31-6-9-5	X	X	G
Iowa	Iowa Code Ann. §§232.142, 356.3; 356.9-356.13	X	X	G
Kentucky	KY Rev. Stat. §§208.120, 208.130, .300, .400, .520, .990	X	X	G
Maine	ME Rev. Stat. Ann. Title 22, §§7801-7805, 8101-8102; Title 34, §3	X	X	G
Massachusetts	MA Ann. Laws Ch. 119, §67; CH.120, §10, §22		X	G
Minnesota	Minn. Stat. Ann. §§241.021, 245.781 et seq.	X	X	G

STATE	STATUTORY REFERENCE	STANDARDS PROVIDED**	ENFORCEMENT PROVIDED***	REGULATORY BODY****
Mississippi	Miss. Code Ann. §43-15-5			G
Missouri	MO Ann. Stat. §219.056	X		G
Montana	MT Rev. Codes Ann. §71-210(b)			G
Nebraska	NB Rev. Stat. §§43-214, 219, 707, 71-901-905	X	X	B
Nevada	NV Rev. Stat. §62.100 et seq.	X	X	J
New Hampshire	NH Rev. Stat. Ann. §170-E:1 et seq.	X	X	G
New Jersey	NJ Stat. Ann. §§30:1-15, 30:1-16, 2A:4-57	X	X	G
New Mexico	NM Stat. Ann. §13-14-6	X	X	G
New York	Family Law Family Ct. Act §§119, 256, 720 (Bender)	X		G
North Carolina	NC Gen. Stat. §§108-78, 108-79, 153A-216 et seq.	X	X	G
North Dakota	ND Cent. Code §27-21-09			G
Ohio	OH Rev. Code Ann. §§3709.22, 3709.26, 5103.05, 5139.281	X		G
Oklahoma	OK Stat. Ann. Title 10 §401 et seq.	X	X	G
Oregon	OR Rev. Stat. §§169.070, 418.255, 418.260		X	G
Texas	§51.12	X	X	J
Virginia	§16.1-310 et seq.	X	X	G
Washington	§13.04.037	X		J
West Virginia	§§49-2-3 et seq., 49-5-16a-b	X	X	G
Wisconsin	§46.16	X	X	G
Wyoming	§§14-4-101, 14-4-115		X	G

*This is not a complete list--only juvenile codes were consulted for the most part. See the Survey and Handbook on State Standards and Inspection Legislation for a more thorough, albeit dated (1974), listing.

**General or specific standards may be provided or a government department or public officer may be authorized to establish and promulgate reasonable minimum standards for construction, operation, and maintenance.

***Types of enforcement include revocation of licenses, actions brought by attorneys general and district attorneys, fines, imprisonment, and the closing of facilities.

****"G" = Government department/licensing board
"J" = Juvenile court or commission
"B" = Both G + J

Notes

[1]Victor L. Streib, Juvenile Justice in America (Port Washington, New York: Kennikat Press, 1978), pp. 5-6.

[2]Streib, p. 57.

[3]Section 169-B:1, New Hampshire House Bill No. 831 (1979).

[4]Mortimer J. Stamm, "Transfer of Jurisdiction in Juvenile Court," Kentucky Law Journal, vol. 62 (1973), pp. 142-143.

[5]Samuel M. Davis, Rights of Juveniles: The Juvenile Justice System (New York: Clark Boardman Co., 1974 w/1979 Supplement), p. 113.

[6]17A A.R.S. Juv. Ct. Rules of Proc., rule 12, as cited and described in A Review and Analysis of the Juvenile Court Process in Arizona, by Martin Willett (1979).

[7]Section 51(b), Title 33, Ch. 1, American Samoa Code (Equity Pub. Corp.).

[8]Davis, p. 116.

[9]Mark M. Levin and Rosemary C. Sarri, Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States (Ann Arbor: National Assessment of Juvenile Corrections, 1974), p. 23

[10]Davis, p. 8.

[11]Section 46b-120, Title 46b, Ch. 815t, Connecticut General Stats. Ann. (West Pub. Co.).

[12]Section 46b-121, Conn. Gen. Stats. Ann.

[13]Section 12-15-1(3)(b), Vol. II, Title 12, Code of Alabama.

[14]Davis, pp. 9-10.

[15]Section 46b-120, Title 46b, Ch. 815t, Connecticut General Stats. Ann. (West Pub. Co.).

[16]Section 169-B:2(II), New Hampshire House Bill No. 831 (1979).

[17]Comment on Section 8, National Council on Crime and Delinquency, Standard Juvenile Court Act (New York: N.C.C.D., 1959), pp. 24-25.

[18]Comment on Section 8, Standard Juvenile Court Act. p. 25.

[19]Comment on Section 8, Standard Juvenile Court Act, pp. 25-26.

[20]Standard 14.1, Juvenile Delinquency Interdepartmental Council, Standards and Goals for Juvenile Justice, (Washington, D.C.: J.D.I.C., 1974), p. 22.

[21]Davis, pp. 52-53.

[22]National Institute for Juvenile Justice and Delinquency Prevention, "Police-Juvenile

Operations," A Comparative Analysis of Standards and State Practices, Vol. II (Washington, D.C.: N.I.J.J.D.P., 1977), pp. 28-29.

[23]Davis, pp. 48-49

[24]N.I.J.J.D.P., Vol. II, p.31.

[25]Davis, p. 46.

[26]Section 419.569(2) OR Rev. Stat.

[27]Streib, p. 64.

[28]Standard 12.9, N.I.J.J.D.P., Vol. II, pp. 37-38.

[29]Standard 6.4, Juvenile Justice Standards Project (Institute of Judicial Administration-American Bar Association), Standards Relating to Interim Status (Cambridge, Mass.: Ballinger Pub. Co., 1977), p. 75.

[30]Standard 6.5, J.J.S.P., pp. 75-76.

[31]Commentary to Standard 6.5, J.J.S.P., p.77.

[32]Principle 3.1, J.J.S.P., p. 50.

[33]Commentary to Standard 6.6, J.J.S.P., p. 78.

[34]Streib, p. 63.

[35]Streib, pp. 31, 62-63.

[36]National Coalition for Jail Reform, Draft Position Papers, March 21, 1979.

[37]Article 34(c), "Code of Juvenile Procedure," La. Stat. Ann.

[38]Section 38-841, Ch. 38, Art. 8 Kansas Stat. Ann.

[39]Section 2A:4-62(b), Title 2A, Article 6, Chapter 4, N.J. Stat. Ann.

[40]Section 78-3a-30, Title 78, Ch. 3a, Utah Code Ann.

[41]Section 3-815(d), Title 3, Subtitle 8, Ann. Code of Maryland (Vol. 2).

[42]Section 702-8, Ch. 37, Ill. Ann. Stat.

[43]Section 14-21-590, Title 14, Ch. 21, Art. 5, C.L. South Car. (Vol. 6).

[44]Section 51.12(a), Title 3, Ch. 51, Texas Fam. Code.

[45]Section 8-226(b), Title 8, Ch. 2, Ariz. Rev. Stat. Ann. (Vol. 2).

[46] Standard 10.3, J.J.S.P., p. 36.

[47]Standard 10.4, J.J.S.P., p. 98.

[48]Section 26-8-23.1, Title 26, Ch. 26-8, South Dakota C. L. (Vol. 9).

[49]Section 3-815(c), Title 3, Subtitle 8, Ann. Code of Maryland (Vol. 2).

[50]Standard 12.11, N.I.J.J.D.P., "Pre-Adjudication and Adjudication Processes," Vol. VII, pp. 26-27.

[51]N.I.J.J.D.P., Vol. VII, pp. 26-27.

[52]N.I.J.J.D.P., Vol VII, p. 31.

[53]Commentary to Standard 1.2, J.J.S.P., Standards Relating to Pretrial Court Proceedings, pp. 25-27.

[54]17A A.R.S. Juv. Ct. Rules of Proc., rule 3(d), (e), Willett report.

[55]J.J.S.P., Standards Relating to Interim Status, pp. 90-91.

[56]Section 16-2320(e), Title 16, Ch. 23, District of Columbia Code Ency. (Vol. 7)

[57]Section 24A-2401, Ch. 24A-23, Juvenile Court

Code.

[58]Section 3-823, Title 3, Subtitle 8, Ann. Code of Maryland (Vol. 2).

[59]Section 27-20-33, Title 27, Ch. 27-20, North Dakota C.C. (Vol. 5A).

[60]Section 3-823(b), Title 3, Subtitle 8, Ann. Code of Maryland (Vol. 2).

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